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ABSTRACT

This volume contains the texts of 40 statements, 22 exhibits, and 5 unsolicited papers presented at a consultation dealing with the public policy implications of various civil rights issues affecting handicapped Americans. Among those issues addressed in the statements are the following: the nature and scope of civil rights issues affecting the handicapped; federal initiatives that address these issues; employment and the handicapped in the public sector; the employment of disabled people in the private sector; social services, constituency and advocacy, and state action for handicapped persons; physical facilities and handicapped individuals; and transportation for handicapped persons. Various public and private sector agencies and organizations were represented at the hearing, including the American Coalition of Citizens with Disabilities, Inc.; the Department of Justice; American Telephone and Telegraph Company, Mainstream, Inc.; the Department of Labor; the Department of Health and Human Services; the Equal Employment Opportunity Commission; the California Department of Fair Employment and Housing; the Minnesota Department of Human Rights; the University of Maryland; the Disabled American Veterans; the Center for Independent Living, Berkeley, California; Barrier Free Environments, Inc.; and the Department of Housing and Urban Development. A 19-page bibliography concludes the report. (MN)

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# Civil Rights Issues of Handicapped Americans: Public Policy Implications

A Consultation
Sponsored by
the United States
Commission on
Civil Rights

May 13-14, 1980
Washington, D.C.

CE 034404

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The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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# Introduction

The U.S. Commission on Civil Rights sponsored a consultation on "Civil Rights Issues of Handicapped Americans: Public Policy Implications" on May 13–14, 1980, in Washington, D.C. The Commission sponsored this consultation pursuant to its factfinding and clearinghouse jurisdiction. The Civil Rights Act of 1957, as amended, established the Commission and empowered it, among other responsibilities, to study, collect and disseminate information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, national origin, sex, age, and handicap. Handicap, as well as age, were added to the Commission's jurisdiction when Congress extended its life in 1978.

The purpose of this consultation was to enable the Commission to identify and examine civil rights issues relating to disabled persons in our society and to address potential solutions. It was designed to provide an opportunity for the Commissioners and staff to hear from, and to enter into dialogue with, selected authorities, advocates, consumers, and practitioners who are acknowledged experts regarding the civil rights issues of this group, as well as from appropriate Federal and State agencies. Its further purpose was to inform the Commissioners and staff of those barriers to employment opportunities that tend to deny disabled persons equal protection and opportunities under the laws. While this consultation was focused primarily on employment, the Commission recognizes that disabled persons cannot achieve equal employment opportunities and independent living when they are effectively denied equal access to places of residence, public accommodation, facilities, and transportation.

The consultation consisted of four sessions in which an overview paper and six issue-oriented papers were presented and discussed. It involved a total of 30 participants, who represented a broad range of subject expertise, knowledge, and experiences in employment and service delivery programs for disabled persons. The particpants also represented the divergent views of professional, consumer, and adovcacy groups, as well as the experiences of Federal and State governments in protecting the rights of disabled persons.

In preparation for the consultation, more than 12 professional, consumer, and advocacy organizations of or for disabled persons, and

10 Federal departments and agencies were contacted, and selected representatives and staff were interviewed to determine a priority of handicap issues to be considered in focusing the consultation. Additionally, more than 30 State human relations commissions were contacted for information to be reviewed for the selection of State panelists. As a result of these background activities, the consultation was focused on the application of section 504 of the Rehabilitiation Act of 1973, as amended, to employment and related service issues, identified as of high priority by the participants and advocacy groups.

Papers presented and discussions held during the consultation, showed a wide gap between Federal policy and practice. Although public policy articulated in Federal laws has favored social integration, entitling disabled Americans to full participation in the mainstream of society, many physical barriers limit their ability to live independent lives. What follows is a brief summary of the major issues identified and discussed during the consultation.

The Congress of the United States, recognizing the need to prohibit discrimination against handicapped citizens and to provide assistance to them, enacted the Rehabilitation Act of 1973 (Public Law 93-112), hereinafter referred to as the act. The act contains antidiscrimination provisions, as well as those providing assistance for handicapped persons.

Title V of the act, as amended, established Federal policy with respect to discrimination against disabled persons. The act mandated Federal involvement in providing equal protection and equal opportunity under the laws for disabled persons in all federally assisted programs. It also prohibited employment discrimination against disabled persons by Federal departments and agencies and by recipients of Federal contracts and grants. Additionally, Federal departments and agencies and recipients of Federal contracts and grants are required to engage in affirmative action to hire and promote disabled persons in the mainstream of employment opportunities. The act established, among other things, an Architectural and Transportation Barriers Compliance Board (A&TBCB) to enforce the Architectural Barriers Act of 1968, which requires Federal buildings and facilities to be accessible to disabled persons.

It was noted during the consultation that the protections for disabled persons provided by Title V of the Rehabilitation Act of 1973, as amended, are identical with or similar to the protections provided by the antidiscrimination provisions of Title VI of the Civil Rights Act of 1964, and Title IX of the Education Act Amendments of 1972, with respect to racial and ethnic minorities and women. Thus, Title V of the Rehabilitation Act of 1973, as amended, constitutes the establishment of basic Federal policy with respect to civil rights for disabled

Americans, disabled Vietnam-era veterans, disabled veterans of other wars, and older persons. The Rehabilitation Act defines the term "handicapped (disabled) persons" under three general categories:

1. a person whose physical and mental condition substantially limits one or more major life activities;
2. a person with a history of such a condition; or
3. a person perceived as having such a condition.

The first category includes the traditionally accepted definition of disability such as blindness, deafness, paralysis, and amputation. The second category extends the coverage of the Act to include persons whose history of conditions, ranging from drug abuse to heart disease, makes them legally handicapped or disabled and, therefore, protected. The third category further extends coverage to persons with facial disfigurements, abnormal spinal x-rays, or other conditions that in no way affect them physically or mentally, but which could be used as a basis for discrimination. Nevertheless, the definition of the term "handicapped (disabled) persons" in the Rehabilitation Act and in the HEW implementing regulations has been and still is one of the more controversial aspects of recent Federal policy with respect to disabled Americans.

Discussions at the consultation revealed that although section 504 was enacted in 1973, it was not until 1977, 4 years later, that HEW, the designated lead agency, issued the first set of regulations governing its implementation. Subsequently, the department issued guidelines for 29 other Federal agencies to follow in drafting similar regulations. The Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978 extended the coverage of section 504 to Federal agencies as well as to their grant recipients. However, as of June 20, 1980, only 11 of the 30 agencies that must promulgate section 504 regulations had published their final rules. Thus, 7 years after enactment of Title V, there had been virtually no coordinated compliance or affirmative action programs, and enforcement efforts had been limited largely to the handling of individual complaints.

The major reason offered for the delay in implementing a coordinated compliance program was the lack of reliable identification criteria or definition of disabled persons who would be subject to the protections of Title V. This was said to be due mainly to a lack of adequate and reliable data on social and economic characteristics of the handicapped or disabled population as a basis for public policy decisions.

Other common problem areas identified at the consultation relate to issues involving reasonable accommodation in employment and related service areas such as public facilities and transportation, and exemptions based on business necessity and undue harship resulting from the cost of retrofitting existing buildings and facilities. With respect to employment-related social services, the eligibility standards for income maintenance programs as they are presently administered to disabled persons are often perceived by them to be disincentives to employment opportunities. Finally, there is presently no Federal requirement that private employers not subject to section 504 of the Rehabilitation Act of 1973 hire disabled persons or make accessibility modifications.

Franklin D. Roosevelt once said that "the secret to the revitalization of society is to restore in. . .every human being a sense of dignity." Such a feeling of self-worth can result only where individuals have full and equal access to all aspects of society. One of the more important means for instilling and preserving a sense of dignity, especially for disabled Americans, is in providing an equal opportunity for rewarding and remunerative employment that would enable them to live independent lives.

It is hoped that this consultation and these proceedings will contribute to a better understanding of and sensitivity to those barriers that deny disabled Americans equal employment opportunities and the enjoyment of their civil rights. Also it is hoped that the potential solutions suggested by the participants may contribute to improved Federal activities which will help close the gap between policy and practice, promise and reality.

## *The Consultation Staff*

Preparation for the substantive content of the consultation was under the direction of Herbert H. Wheeless, who also served as project director for the consultation, with the assistance of Violet D. Baluyut and Betty K. Stradford of the Community Relations Division, Office of Congressional and Public Affairs. Additional assistance was provided by Barbara Brooks, Alfonso Garcia, David Grim, Jim Karantonis, Loretta Ward, Pauline Washington, and Celeste Wiseblood. Support services were provided by Ana Dew, Patricia Ellis, Deborah Harrison, Barbara Hulin, Dennette Petteway, and Ginger Williams. Administrative and management services were provided by staff of the Office of Management: Ruth Ford, Frank Matthews, Curtis Pearson, and Natalie Proctor. OM assistance also was provided by Miu Eng and Delton Harrod, Drafting and Design, and Lenora McMillan, Librarian, and the Clearinghouse staff.

The staff of the Publications Support Center was responsible for the final preparation of the document for publication.

The consultation was under the overall supervision of Frederick B. Routh, Director of the Community Relations Division, and William T. White, Jr., then-Assistant Staff Director for Congressional and Public Affairs.

# CIVIL RIGHTS ISSUES OF HANDICAPPED AMERICANS: PUBLIC POLICY IMPLICATIONS

## A Consultation Sponsored by the U.S. Commission on Civil Rights, Washington, D.C., May 13-14, 1980

**Chairman Flemming.** I am very happy to welcome you to this consultation. I think the objectives of the consultation come through very clearly as one looks at the agenda that has been developed for today and tomorrow. Consequently, in the interest of getting started, listening to those who are going to make presentations to us on time, I am not going to attempt to review those objectives at this particular time.

I would like to say this: that if there are persons who are in attendance now or who will be in attendance who have views that they would like to call to the attention of the Commission and who have not been invited to participate in the consultation, we would be very glad to have you contact members of our staff, and tomorrow afternoon we will be glad to listen to such persons under a 5-minute rule with the understanding that such persons may file for the record of the consultation a text setting forth in more detail the views that they may have on some of these issues. This is a practice that we follow in connection with public hearings, but because of the importance of this consultation, we decided that we would also follow it tomorrow.

Some of the members of the Commission will have to leave by tomorrow afternoon because the consultation was scheduled to adjourn at 1:30 or 1:40, but I will be here and a number of the others may be able to join me also.

But, again, so that everyone is clear, if anyone does want to take advantage of that particular procedure, the person should contact staff, Mr. Routh or other members of the staff, indicate what your desires are, then you will be recognized on a first-come, first-served basis tomorrow afternoon under a 5-minute rule, but with the understanding that you can also expand your comments as far as the written record is concerned.

Also, there may be people who do not want to take advantage of that, but who would like to file a statement with us regarding their views; such statements will be considered for inclusion in the record.

I am asking my colleague, the Vice Chairman of the Commission, to preside this morning. As you will notice, I am joined this morning for the consultation by members of the Commission and also some Commissioners-Designate.

On my immediate left is Commissioner Saltzman; next to him is Dr. Ramirez, Commissioner-Designate; next to her is Mr. Nuñez, the Staff Director of the Commission; the Vice Chairman, Mr. Horn, is on my immediate right; next to him is Mrs. Jill Ruckelshaus, Commissioner-Designate; next to her is Commissioner Ruiz; and next to Commissioner Ruiz is Dr. Berry, also Commissioner-Designate. The three Commissioners-Designate have been nominated by the President and their nominations are now under consideration by the Senate of the United States.

## Overview—Nature and Scope of the Issues

VICE CHAIRMAN HORN. The opening session will provide an overview on the nature and scope of the civil rights issues related to handicapped Americans and their public policy implications.

For each of the sessions today and tomorrow, various papers have been furnished by some of the key witnesses. They will automatically be included at the beginning of each section of this hearing and we will be asking the witnesses to summarize their remarks in a brief period of time, approximately 20 minutes in most cases, and we will then have the Commissioners and Commissioners-Designate ask questions of those witnesses.

Our first witness, to provide an overview on the nature and scope of the issues, is Dr. Frank Bowe, director of the American Coalition of Citizens with Disabilities. He has been director of the coalition since 1976. It is the national umbrella organization. There are about 80 national State-local advocacy organizations that represent in total over 7 million handicapped individuals.

Before assuming this position he was a research scientist at New York University where he was pursuing research and instruction in learning, memory, and sensory disability.

He is the author of over a hundred articles and books on the handicapped and has chaired numerous conferences. His two most recent books are *Handicapping America: Barriers to Disabled People* in 1978 and *Rehabilitating America: Toward Independence for Disabled and Elderly People* in 1980.

He will now provide an overview of his paper on civil rights issues of handicapped Americans.

Dr. Bowe.

DR. BOWE. Thank you, Mr. Horn.

# AN OVERVIEW PAPER ON CIVIL RIGHTS ISSUES OF HANDICAPPED AMERICANS: PUBLIC POLICY IMPLICATIONS

By Frank G. Bowe*

The United States Civil Rights Commission is beginning its study of disability rights issues at a propitious time, able to reflect upon the short-range and long-range implications of decisions already made by public agencies and private organizations while also positioned to influence changes in direction before courses of action are irretrievably set. This is true because the foundation of Federal involvement in the area of civil rights for disabled persons is of very recent vintage. Basic determinations of policy and direction have not yet been translated into uniform procedures for implementation and enforcement. The legal parameters governing Federal actions are still being refined through a process of rulemaking and case history. Even so fundamental a question as how to define the target population remains somewhat open and flexible. The Commission, then, has an opportunity to achieve meaningful input and impact.

That the long-delayed Federal effort, as yet so new, contains already the seeds of impending failure such that resolution of its problems is of urgent importance may seem an overstatement, hyperbole, exaggeration. Yet to make such assertions, and to convince you of their essential validity, is the nature of my task this morning. I must make you understand that the Commission's opportunity in this area is accompanied by an obligation to act firmly and expeditiously to trigger coordinated, positive action throughout the Federal Government.

In describing the historical development of current programming and in presenting recommendations for future directions, I will be pursuing several pervasive themes. These will be developed in greater detail in the four sessions to follow over the next 2 days, as nationally prominent experts consider trends in employment, social services, barrier removal, and transportation.

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* Dr. Bowe is director, American Coalition of Citizens with Disabilities, Inc. (ACCD), Washington, D.C. This paper was prepared at the request of the Commission to offer an introduction and historical overview of public policy concerns of disabled Americans with respect to civil rights. Requests for reprints and exercise of other user rights should be directed to the Commission, Washington, D.C. 20425.

First, progress in implementation and enforcement of disability rights is being hindered by false controversies that have the effect of obscuring the very basis for Federal action. In many respects, the questions being posed are the wrong questions. Not surprisingly, then, many of the answers being proposed are the wrong answers.

Second, the very agencies responsible for enforcing standards of access and nondiscrimination upon external groups are grossly negligent in conforming themselves to these same standards. Inevitably, the seriousness of the Federal Government in this area is widely doubted, undermining the Federal role even before it begins.

Third, there is a persistent failure to coordinate policy across agency and departmental lines. One might expect that efforts to promote employment opportunity for disabled individuals would be accompanied by attempts to ensure the availability of appropriate supportive services. In fact, however, such services typically are available only to disabled individuals who are not actively seeking work.

Fourth, the Federal effort is routinely fragmented by protected-class category such that relationships between disability, race, sex, and age are ignored, despite powerful evidence that discrimination in each area can only be eradicated by a concerted effort on all.

Fifth, the relationships between disability-rights enforcement and such government-wide concerns as inflation and the size of the Federal budget are almost universally misunderstood. The administration is undercutting its own efforts by taking steps in disability areas that exacerbate broader problems. This is particularly true with respect to control and reduction of discretionary spending on services preparing disabled individuals to be "qualified" for protection under Federal civil rights statutes.

Sixth, the Federal effort to date has been predominantly a passive one. As a result, changes in perception that are essential if changes in procedure are to occur do not take place. More tragic, my organization estimates that as many as 8 out of every 10 disabled Americans still do not know enough about their rights to be able to take full advantage of these advances. For millions, these rights might as well not exist. To appreciate the full magnitude of that problem, consider that if current trends continue apace for just a few more years, these rights will not, in fact, exist.

## *Historical Overview*

How did we get to this point?

Perhaps the central controlling thesis governing the process of serving disabled individuals throughout the 200-year history of this Nation has been segregation of these people from the mainstream of American life. Disabled individuals were prohibited from settling in the towns and villages of our Thirteen Colonies unless they could demonstrate ability to support themselves independently. Settlement laws enforced these requirements. Immigration policy effectively forbade entrance into the country of persons with physical, mental, or emotional disabilities.

Within the Colonies, and later the States, community mores recognized indolence as a prime evil. Because popular perceptions equated disability with inability, existence of a disability appeared reason enough to deny a person the right to participate in societal life. Within families, persons with disabilities were hidden, disowned, or even allowed to die through the withholding of life-support services. Within disabled individuals, self-perception inevitably reflected prevailing social attitudes, keeping people from even attempting to become self-reliant.

As the Nation's population increased, public pressure for institutionalization of disabled persons escalated. From the beginning, institutions for mentally and emotionally impaired persons were custodial rather than educational. Persons with sensory and physical disabilities were more likely to be taught at least fundamental academic material, but instruction was less to prepare these individuals for vocations than to satisfy religious and societal expectations and to resolve ethical concerns. It was a caretaking mentality as much as a "protecting" one; that is, "lunatics" were safely removed from the community and while "there" were inculcated with moral preachings flavored more with a Catholic charity than a Protestant work ethic.

Gradually, in the 19th century, the concept began to emerge that individuals with disabilities were occasionally also persons with abilities and that training for work was something which might be attempted. It was not until large numbers of veterans returned from the First World War, however, that any Federal initiative in this area emerged. Stimulated by positive experiences employing disabled workers during the war, a step necessitated by the virtual absence of able-bodied employees, the Congress enacted in 1918 its first rehabilitation legislation.

Three years after his inauguration as President, Franklin Delano Roosevelt signed into law the Social Security Act that established old-age and survivors' benefits, unemployment compensation, and programs for disabled youth and adults. The act represented a recognition that assistance to disabled individuals was as much a matter of social justice as charity.

Thirty years later, the Federal Government entered into a partnership with the States to provide special educational services for disabled children and youth. The 1965 legislation was expanded in later acts, culminating in the 1975 Education for All Handicapped Children Act

(Public Law 94–142), a statute that is as much concerned with rights as it is with educational services. These steps were taken in response to parental pressure and judicial decisions arising from the fact that millions of disabled children were being denied any education at all. The 1975 act also builds upon (and this has been less widely recognized) the landmark final passage of the Rehabilitation Act of 1973 (Public Law 93–112). Title V of that act, specifically section 504, is the foundation for civil rights for the Nation's 36 million disabled individuals today.

What conclusions may be drawn from this brief review of historical trends?

First, segregation has removed disabled individuals from the community; these people literally have been kept out of sight and out of mind. This fact has produced two powerful effects visible today. First, disabled individuals are unfamiliar to many Americans; one way of putting it is to say that in many respects disabled persons are strangers in a strange land. Attitudes of the general public toward disabled individuals, accordingly, are quite negative. Disabilities engender fear and discomfort in many "temporarily able-bodied" individuals, so much so that the average American finds it very difficult to see beyond the disability to the abilities. Second, America is today an inaccessible land. Our buildings, communications technologies, modes of transportation, and other programs were developed to meet the needs of people who lived in the community; disabled individuals, who did not, were not considered in the planning of these facilities and services.

From these effects, particularly the second, flows the corollary conclusion that change will be difficult and often expensive. Two hundred years of discrimination will not be removed in two. First, millions of Americans have great difficulty conceiving of disabled individuals as persons who could produce if offered equal opportunity. As one vice president of a major university put it when section 504 regulations were issued by then-Health, Education, and Welfare Secretary Joseph A. Califano, Jr.: "We are required by this to prepare facilities that almost certainly will never be used." And, of course, retrofitting existing facilities and retooling existing programs will cost large sums of money.

Another conclusion we may draw is particularly intriguing with respect to the Commission's work. Civil rights statutes for disabled individuals preceded, rather than followed, massive social movement by this population. No March on Washington even remotely reminiscent of that which helped bring the 1964 Civil Rights Act and the 1965 Voting Rights Act took place. Accordingly, the structure and power available to blacks and to other minorities to force implementation and enforcement of the law is still being developed within the disability movement.

Third, a monumental problem faces disabled persons: overcoming the tremendous effects of family, school, and society, all of which continue to communicate expectations of dependency, to emerge with sufficient self-confidence even to strive toward independence. Unlike many other minorities, the disabled population cannot depend upon a social structure to provide some of the necessary assistance. While black children usually have two black parents, disabled children normally have two able-bodied parents. The process of moving toward assertiveness and independence, then, must begin anew with each child.

Fourth, and this is vivid in the historical evidence, the Federal role is and must be powerful. That any progress has been made to date in civil rights for disabled persons can be traced to Federal initiatives. While State, local, and private efforts have in some instances produced positive effects, the fact remains that until the Federal Government stepped in, these sectors of our society manifestly did not protect the rights of disabled individuals. I will return to this concern when I discuss future directions, particularly with respect to States' rights and education policy.

Fifth, the admittedly awesome reality is that so little has been done to date that the most basic human and civil rights of tens of millions of Americans are not even beginning to be met. The challenge could not be more sharply drawn. In addition, there is the important consideration that the caretaking mentality and the segregation "solution" long predate protection of rights and integration of services; the former, then, are deeply rooted, powerful trends that must be confronted if we are to transcend the apparent contradiction between the two and provide the services disabled persons need to be able to compete with others on an equal basis.

## *Future Directions*

Where do we go from here?

I would urge the Commission, first, to examine the current controversies contaminating debate on civil rights issues of disabled Americans. Some of these hotly disputed topics are in fact based upon false premises. Let us look at a few of these controversies.

*Who Benefits?* The argument is made that only a few will benefit from what are in many instances extensive expenditures. In the area of transportation, for example, claims are made that accessible buses will benefit only a few thousand individuals using wheelchairs. In fact, however, access and other aspects of civil rights protection benefit far more than is generally realized. First, the disabled minority is an "open" one; anyone may become disabled at any time. Hence, the changes help not only those who are now disabled, but many currently able-bodied persons as well. Second, the alterations in practice and in facilities that are called for by law are in many instances precisely the kinds of changes elderly Americans need to be able to function independently in the community and to continue to live productive lives. Third, as I will argue at more length later, the protection of civil rights for disabled persons benefits all of us, because it enables persons who otherwise would have to be tax users to become taxpayers, thus sparing the general population of the necessity to provide lifelong care for disabled persons.

*"Special" Privileges.* The contention is made by some that current civil rights laws benefiting disabled persons extend to these individuals special and unique privileges. The response of those who raise this allegation is that no more should be done for disabled persons than is done for any other group of Americans. In fact, however, the civil rights statutes in question confer only nondiscrimination and equal protection guarantees; they do not offer special privileges. In some instances of private employment by Federal contractors, "affirmative action" is mandated, not in the sense of quotas and timetables, but to ensure that appropriate steps are taken to make employment opportunity possible.

*Who Should Pay?* Some sectors of our society are balking at taking the action required to comply with Federal law, insisting that the Federal Government first pay for these procedures and renovations. To do so, however, would establish a pernicious "no pay, no rights" situation in which private organizations would not protect rights until they are paid to do so. Additionally, such payment by the Federal Government would jeopardize equal protection efforts on behalf of other minorities, who also need steps taken to make opportunity possible.

*Appropriate Role.* There are some who question whether the Federal Government has in fact any business in this area. The claim is particularly common in educational circles, where State and local authority are perceived to be at stake, but it appears as well in transportation policy (where "local option" is a rallying cry) and other areas. The precedents in race, sex, age, and religion, as well as the existence of constitutional guarantees to equal protection, however, appear sufficient to invalidate this argument; also relevant, as I have noted, is the historical reality that until the Federal Government assumed its role, these rights were not protected even in the most minimal fashion. At least one individual has suggested that education "be returned to the States." Should this come about, I would argue

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forcibly for Federal retention of the role of protecting essential civil rights, on constitutional, legal, and historical grounds.

Commission investigation of these and other false controversies will, I believe, be beneficial because these disputes pervade all areas of civil rights policy and permeate all major Federal agency initiatives in the areas of education, employment, social services, barrier removal, and transportation.

I would propose, second, that the Commission take a long and hard look at the ways Federal departments and agencies are themselves protecting the human and civil rights of disabled persons. This is vital not only because so many disabled persons are actually and potentially affected, but also because to have any credibility with the private sector the Federal Government must first get its house in order. This is the "glass house" standard—and the Federal Government indisputably fails it. Employment of disabled individuals, an issue to be addressed later today, can only be described as abysmal. Agency compliance with Public Law 95-602 requirements that they themselves follow section 504 in their programs and activities is nonexistent in almost every department. There can be no clearer signal to the country that the administration is serious about disability rights than a convincing demonstration of commitment to these rights in its own internal workings.

Interagency coordination is a third issue I believe the Commission should address. On section 504, for example, a majority of agencies subject to Executive Order 11914 still have not promulgated final rules governing implementation of the statute; equally serious as a problem is the fact that those rules which have appeared have varied substantively, imposing difficult standards upon cities, counties, States, universities, and other recipients of aid from more than one Federal agency and, equally important, confusing disabled people as to what rights are protected where and in what way. The administration has taken, to date, a remarkably passive role on this problem, permitting deadline after deadline to pass with no serious effort to impose order and discipline upon the affected agencies.

There are other, similarly serious, interagency problems. The most vivid, perhaps, concerns employment issues. Many disabled people require certain supportive services in order to be able to work: access to the workplace, availability of sign language and other translation services, suitable housing, usable public transportation, and the like. These are available—if the disabled person does not work. Thus, recipients of social security benefits often may obtain housing in federally assisted developments, transportation in social service transportation programs, attendant-care services in the home, and coverage of medical expenses. Persons who work are denied all these essential services. Our government effectively nullifies its own efforts by such contradictory requirements. I am not arguing for reduction or elimination of these services for recipients of financial aid—far from it, as many recipients are not able to work. But I do believe that extension of similar help for employed persons would be remarkably effective in stimulating employment among disabled Americans.

This would be largely separate from an ongoing effort to remove "work disincentives" from social security legislation and regulations. Pending legislation (H.R. 3236 and H.R. 3464), passed by both Houses of Congress but not yet enacted as a conference bill, would remove many disincentives to employment. What I am talking about is providing incentives to work. Similarly, passage of legislation extending employment protection to noncontractors, through revision of Title VII of the Civil Rights Act, is vital if the goal of equality of opportunity in employment is to be reached. Other efforts might include incentives to industry to hire disabled individuals, through tax credits and other measures. Finally, some form of national health insurance will be needed to offer severely disabled persons coverage for high medical expenses so that they may work.

A fourth area I would encourage the Commission to investigate is that of the interrelationships between the various protected classes with respect to civil rights enforcement. We have found that poverty is a major factor in "causing" disability. Similarly, prevalence rates of disability are twice as high among blacks as among whites and others in our country. As many as 35 percent of all elderly persons have at least one disability. It must be true that we cannot eliminate discrimination, or promote equality of opportunity, for disabled persons without at the same time attacking the roots of discrimination among others in our society. Yet it is true that enforcement activities are almost without exception uniclass in nature. Some progress has been made in this area very recently, notably the efforts by the Departments of Health, Education, and Welfare (now Health and Human Services) and Labor to consolidate enforcement programs for minorities, women, and disabled persons. The most pervasive commonality—that of the needs of elderly and disabled individuals—has yet to be recognized officially through common efforts. It appears almost certain that consolidation will conserve scarce personnel and other resources while multiplying effectiveness of implementation efforts.

Fifth, the Commission might look into the economics of disability and age. In its rush to "balance the budget," the administration is proposing broad cuts in discretionary programs and control over enforcement expenditures in civil rights. For disabled individuals, as well as for other protected groups, such cuts have tragic consequences. The Title V provisions of Public Law 93-112, to take just one major example, offer protection for "qualified" handicapped individuals, that is, those who meet the eligibility criteria for service provision and employment. By constraining spending on vocational training and other services, the administration is ensuring that fewer and fewer persons will be "qualified" for protection under the law; this means, of course, that more and more will be qualified for Federal financial aid. I have calculated recently that for each person who leaves or avoids altogether such programs as social security disability insurance, the dividend for the Federal Government is $11,000 annually: about $2,000 in income and payroll taxes on an average income of approximately $10,000 and about $9,000 in medical, service, and other benefits provided through the social security programs. Thus, this year's budget may be balanced, but subsequent budgets will be thrown seriously out of balance. Meanwhile, the lives of millions are seriously harmed.

Then, too, the kinds of expenditures that would remove disability from the ranks as one of our most pressing social problems are being curtailed or foregone altogether. I am thinking particularly of research and technological efforts. We have today the capability of helping a severely paralyzed individual "move" anything that can be controlled electrically; in fact, basic research in at least two sites is showing that spinal cord injuries may be reversed surgically within the very near future. For blind individuals, we have available machines that literally "read aloud" almost anything in print. On the prototype level, we have machines that will do the opposite for deaf persons—instead of saying what it sees, the machine would print what it hears. Treatment to reduce or even eliminate spasticity in cerebral-palsied individuals is proving surprisingly successful. In the area of mental retardation, progress has convinced the National Association for Retarded Citizens that it is now feasible to talk about possible cures for retardation. At this stage, then, when we can envision these kinds of advances within the foreseeable future, it is very discouraging to realize that the Federal Government is spending on rehabilitation research only one dollar per disabled person per year—and is cutting even that token investment.

My basic point for the Commission is that the administration's failure to understand and act on the economics of disability and age is constricting the effectiveness of its work on protecting and advancing human and civil rights. This is a legitimate area for inquiry by the Commission.

Finally, the passivity of the Federal role to date in enforcing disability rights is a cause for grave concern. By "passivity," I mean the administration's failure to move vigorously and visibly to end discrimination on the basis of disability. This failure is evident everywhere: in the overreliance upon individual complaints from disabled persons (which penalizes the poorer, more severely disabled, less politically sophisticated people who may not be aware of their rights and may not be confident enough to file complaints), in the dependence upon administrative procedures to the almost total exclusion of tougher measures (funds are very rarely cut off even in the face of persistent, blatant violation of law), in the paucity of appointments for disabled individuals and recognized advocates to leadership positions in enforcement efforts (today, for example, all 44 top officials of DHHS's Office for Civil Rights are able bodied), in the absence of serious attempts to advise disabled individuals nationwide about their rights, in the chronic underfunding of enforcement activities, in the readiness to sacrifice rights and services for political gain (in Florida, for example, gross inequities were brought to light by the State's own auditors, by DHHS's Office of the Inspector General, and by other observers, yet the administration sent its Director of Management and Budget to testify before the Congress in favor of granting States waivers from requirements protecting disabled individuals receiving rehabilitation services), in the failure to introduce legislation and actively support others' efforts to extend protection (notably in private employment and housing), and in other areas. This is not to say that progress has not been made. It has. Looking only 2 years into the past, we find that compliance reviews and protected-class consolidated enforcement activities are growing in number and importance. It is to say, however, that we are just beginning.

These problems are serious. To appreciate the urgency of appropriate Commission action on these issues, you must consider the consequences of inaction:

- Controversies over costs and related issues likely will slow significantly the vigor of the Federal enforcement effort—even as it is just beginning.
- Lack of interagency coordination and pooling of efforts will mean that true opportunity continues to elude our grasp. Equal employment opportunity means little to an individual who has not received the training to compete for jobs—because such education was denied in violation of law. Accessible buildings help little if people do not have the transportation they need to get there. Removal of work disincentives does little if people cannot afford to try to work because supportive services are contingent upon not working. Isolated efforts by different agencies then are doomed to almost certain failure.
- Protected-class fragmentation will prevent eradication of the roots of disability. Poverty and related problems are both cause and

effect of disability. The one cannot be solved without the other. And research and technology offer the means to eliminate much existing, and prevent much future, disability.

- Lack of a visible posture as being serious about disability rights cripples voluntary efforts in the private sector while encouraging those who wish to delay or rescind protection.

It is not difficult to envision a conflux of problems, each feeding upon the others, each exacerbating the tensions created by others. False controversies, Federal Government laxity in observing the standards it sets for others, interagency conflicts and overlap, continued cuts in discretionary programs preparing disabled persons to be "qualified" for protection, and continued failure to inform and advise disabled persons about their rights under law may, together, create conditions under which open rebellion against disability rights will occur. In the relative absence of a powerful, highly sophisticated national movement of disabled individuals, political pressures to cut back on these rights will be difficult to resist. The rights so few know about today may not be there tomorrow.

I have spent three decades overcoming a disability and moving from dependence to independence. I and many others have suffered greatly from the denial of even the most basic rights. Our striving is seen as the efforts, not of people who are deserving, but overreaching; not as within their rights, but as jeopardizing and even threatening the rights of others; not as people who can, but as people who cannot.

Very recently that has begun to fall before the force of law. Educators, social service providers, elected officials, employers, and others are now expected to look not just at disability but also at ability, not just at barriers but also at ways to eliminate these barriers. The potential of this new development for freeing abilities from the shackles of disabilities is awesome for millions of Americans and for millions more to come.

For many who have suffered and worked as long and as hard as we have, the dreams of such a short, hopeful time ago now appear fragile, uncertain, and even vain. For the dreams to take hold, to become more real, to live and grow, we must recognize that protecting the rights of disabled persons is in its very essence affirming what is most human about us. The dream must become our dream, each of us and all of us. And then the dream will never die.

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## STATEMENT OF FRANK BOWE, DIRECTOR, AMERICAN COALITION OF CITIZENS WITH DISABILITIES, WASHINGTON, D.C.

DR. BOWE. Chairman Flemming, Commissioners, good morning and thank you for asking me to be with you in this important consultation.

As you know, the Commission is beginning its study of disability rights at a propitious time. Nationally prominent experts will brief you today and tomorrow on the most critical issues meriting your attention.

I have been asked to put down an overview of these concerns and to offer some historical perspective on where we have been, where we are, and where we appear to be heading. I will be developing a number of points. Briefly these are:

- One, the Federal role is and must be substantial. As little as has been done to date on the Federal level, much less, indeed perhaps nothing, would have been done without Federal intervention on our behalf. This role must be sustained and it must be substantial.
- Two, serious problems compromise the integrity and the effectiveness of the Federal Government in this role. Federal agencies responsible for enforcing our laws nationwide have failed to set a standard of excellence in their own compliance with these same laws. Interagency cooperation is noticeable more for its absence than for its presence. The enforcement posture today is best described as passive.
- Three, the administration is undercutting progress on disability rights by restricting investment in training for disabled people. By law, only those disabled individuals who are "qualified" are protected. Curtailments in spending on education, rehabilitation, independent living, and similar services mean, in effect, that fewer disabled persons each year become "qualified" while more become eligible for Federal financial assistance, including disability insurance and supplemental security income. The economics of disability and age offer compelling reasons to upgrade the entire Federal effort in training and enforcement and warn of the grave consequences of further cutbacks.

Mr. Chairman and members of the Commission, you do know from your own investigation of the enforcement of and lack thereof of the rights of elderly Americans the basic concerns I am attempting to address this morning. There are many similarities. There are also a great many differences. But the enforcement posture, the lack of cooperation, the lack of a perspective that would enable this government to recognize the essential similarity and the essential rationale of enforcing these rights and of doing so in conjunction with enforcement of the rights of minorities, women, people who are poor, and people who are old is a perspective that is almost totally lacking in Federal Government today.

The Commission can do tremendous good to this country by recognizing that poverty is a basic cause of disability. Of course, disability is a major cause of poverty. The Commission can do great good by recognizing that as many as one-third of all elderly people are also disabled. The Commission can do great good by recognizing that disability is twice as prevalent among blacks as among all other races in our country. The Commission can do great good by recognizing that among Hispanics and other minorities in our country the prevalence rate of disability and the prevalence rate of false placement in special educational programs on the basis of "disability" is a continuing and extremely serious problem.

The Commission can do great good by recognizing the very simple fact that if this country helps people become taxpayers, that is how you balance a budget, not by forcing millions and millions of people to be tax users and to rely upon the Federal Government to provide them with sustenance, indeed with life, but by recognizing that this country can, this country must, move forward in these areas. This calls for leadership on the part of this administration. It calls for spending. But the economics of disability and age compellingly show it cannot be done otherwise.

These issues may be approached from the historical perspective, which helps explain them and suggests some alternatives to future development of Federal policy in this area. The overriding historical fact is that disabled people have been segregated from the mainstream of America virtually from the Nation's first days. This has two powerful effects: One, the Nation is largely inaccessible to people with physical, sensory, mental, and emotional disabilities; and, two, most Americans have great difficulty conceiving of people with disabilities as people who can work and, therefore, justifying the expenses required to remove barriers so that we can. In fact, it is only in the last decade that the rights of America's 36 million disabled citizens have begun to be protected.

The nature of the Federal role emerges from these considerations. While the Federal Government cannot legislate attitudinal change, it can establish minimum standards for behavioral change. This must be done. I want to stress this point vigorously: A government that claims only a 7 percent rate of employment of disabled people, particularly one in which the lead agencies responsible for enforcement of our civil rights have less than 5 percent employment of disabled people, cannot expect a Nation to take pronouncements about disability very seriously.

In my conversations with business leaders around the country, they say that if the government, which is in the business of spending money, can't see the value of hiring the handicapped, why should they, in the business of making money, do so? A government that ignores the legal mandate requiring Federal agencies to comply with section 504 in their own activities does not command much respect nationwide. A government that assigns responsibility for coordinating the Federal effort to a committee that has yet to demonstrate its effectiveness in this area and which is headed by an individual who is apparently a lame duck does not thereby strengthen its posture. A government that avoids penalizing violators of our civil rights, except in the most extreme and blatant of instances, and even then rarely, does not inspire our confidence. A government that does not have even one disabled individual as administrator of our civil rights enforcement programs shows little conviction in the rightness of our rights. And a government that is reluctant to oppose attempts to destroy our civil rights, as in the current battle over access to mass transit, does not offer reassurance that these rights will survive the assaults of the future.

This year as many as 340,000 fewer disabled people will benefit from rehabilitation than were helped last year thanks to legislation introduced by this administration and enacted or now likely to be enacted by the Congress. Mr. Chairman, speaking as an individual who was named by then-Secretary of State Cyrus Vance to serve as the United States representative to the United Nations in planning the International Year of Disabled Persons, I do feel somewhat compromised in going before the United Nations when I am asked what our government plans to do to celebrate this year and might have to indicate that, well, we would be rehabilitating a third of a million fewer people than we did last year.

Today supportive service is necessary for many disabled people to work, including transportation, accessible housing, adequate medical coverage, attendant care. These kinds of assistance are extended only to those who are not working or actively seeking work. Now, of course, this does come from the historical perspective that people with disabilities are people who can't work, therefore, people who must be taken care of. But the essential point, that it is in the Nation's best interest as well as that of disabled people that we be able to support ourselves and work and that, therefore, this Nation should do what it is that is required to further that goal, seems somehow overlooked.

All this is not to say that no progress has been made since Title V became law in 1973. It has. Looking only 2 years into the past, we can identify areas in which the administration has shown willingness to take our rights seriously. It is to say, however, that we are only beginning.

Perhaps I could add that in a number of countries around the world the concept of rehabilitation to work, the concept that people with disabilities have abilities, the concept that it must be the posture of the country to establish conditions under which these abilities will govern those persons' lives, is unknown. In those countries we have seen a tremendous amount of unrest and disturbance about how to come to grips with the awesome problem of coping with a very large and rapidly expanding population of people with disabilities. It is something that puzzles them tremendously. They don't know what to do and they are faced with the billions and billions of dollars—in some cases hundreds of billions of dollars—in caring for people, and they don't know how to help those people. In this country we do. We know how and we won't do it.

A few of us have managed to overcome many of the barriers and become independent, self-sufficient citizens. For many who have suffered as much and worked as long and as hard as we have, the dreams of such a short hopeful time ago now appear fragile, uncertain, and even vain. For the dream to take hold, to become more real, to live, and to grow, we must recognize that protecting the rights of disabled people is, in its very essence, affirming what is most human about us. The dream must become our dream, each of us and all of us, and then the dream will never die.

VICE CHAIRMAN HORN. Thank you very much, Dr. Bowe.

[Applause.]

You mention in your paper, among many very perceptive and useful observations, that there is a persistent failure to coordinate policy across agency and departmental lines. I wonder if you could elaborate on that somewhat and suggest what solution you see to achieve Federal coordination of programs in this area.

DR. BOWE. I would think, Mr. Horn, the issue is one that can be settled fairly simply, fairly rapidly, fairly expeditiously by the establishment by the President that this shall be done, by the assignment of that responsibility clearly and unambiguously in the hands of someone who has both the authority and responsibility to do that.

I would not begin by handing it to a committee that has not shown it can do it and that is headed by an individual scheduled to leave the government quite shortly, and thereby undermining the very credibility that he might have had.

I would not do it by allowing deadline after deadline to pass with respect to the issuance of regulations affecting our rights. We are talking now about 7 years after the enactment of section 504 and a majority of agencies in this government have not promulgated final rules.

I would not do it by scattering the responsibility for conducting different parts of this effort into different agencies without at the same time providing a powerful and disciplined coordination effort. I am referring, of course, to the fact that section 501, which protects our rights in Federal employment, is placed with one agency; section 503, which deals with private employment by contractors, is dealt with by another agency; section 504 is apparently at this time in limbo, but is the responsibility of a number of agencies throughout government. Supposedly, there is a mechanism for coordinating this. The Congress 2 years ago tried to establish that mechanism. I have seen no evidence today that it works, that the President has given it the kind of authority it needs. Basically, what I am saying is it is a very simple matter; it is a routine matter of hard leadership.

**Vice Chairman Horn.** Do you feel that coordination should come from a lead cabinet officer, such as the Secretary of Health and Human Services? Should it come from a White House coordinator, or Office of Management and Budget coordinator, or whom?

**Dr. Bowe.** I would think that when you are dealing with 36 million people whose needs and lives are affected by and governed by virtually every agency in government, you have to start at the top. I would establish within the Office of the Assistant to the President for Domestic Policy the authority and the responsibility to bring these agencies into line and get them moving.

**Vice Chairman Horn.** Chairman Flemming?

**Chairman Flemming.** First of all, I would like to express to you the deep appreciation for the quality of leadership that you have brought to this movement, and this is certainly reflected in your opening statement to the Commission, a statement which I have found to be very helpful.

I fully understand and appreciate the fact that you find in the present picture very few developments that you could identify as encouraging developments. Nevertheless, I noted that just before the end of your presentation you did say that all of this is not to say that no progress has been made since Title V became law in 1973. You indicated that you felt that there were certain areas where positive steps had been taken.

I am wondering if you could identify for the Commission one or two of the areas where you feel that people have responded to this challenge and have moved forward because personally I feel from time to time it is important to lift up models of success, hoping that that will inspire others to do likewise.

**Dr. Bowe.** Mr. Chairman, thank you first for your very kind comments. I have, as you know, the deepest respect for you personally and the deepest respect for this Commission. I was one of the individuals who did try to help you get the authorization from the Congress to enter into this area, and I am very pleased that you have this authority.

To respond to your question, I think it is important to offer disabled Americans some inspiration that their government cares and will act. You have asked for some success stories. After long and hard searching, I can identify a few.

One, I am pleased that with respect to section 504 enforcement and section 503 enforcement there has been a consolidation of the enforcement activities on behalf of members of minority groups, women, Vietnam veterans, and disabled people. I have seen this in the Department of Labor and the Department of Health and Human Services. This has been encouraging.

Second, I have been encouraged that at long last those two agencies—it doesn't seem to have been picked up by the others yet—but the basic comprehension that you cannot enforce a law merely by investigating complaints has been made. I feel that is a very encouraging step forward because, as you know from your own experience, the people who complain are the most sophisticated individuals and are not the most likely to be discriminated against. And when you have systemic and widespread discrimination, the only way you are going to get at it is by going at it. This is not a case where you go along to get along. This is a case where you go after it; where you find it, you prosecute.

Third, I have been pleased to see on two occasions in recent memory there has been a decision by this government to exercise at least some of its authority. Where discrimination has been blatant, there has actually been a step to terminate funding and begin debarment procedures. That this has not been done more often is, of course, deeply disturbing to anyone who knows, as I do, how widespread the discrimination is out there. It is also very difficult to understand, because I don't see how they expect to achieve voluntary compliance without explaining very clearly that this has got to be done; otherwise there is going to be a penalty.

I am pleased that one department recognizes that our rights cannot be enforced without educating our people on them. It may sound basic, but these rights are so new and, unfortunately, because it is a long and drawnout and complicated process by which so many different agencies are saying so many different things, these rights are complex. I don't understand how, in a situation where 8 out of 10 disabled Americans, to the best of our knowledge, don't know enough about their rights to be able to take full advantage of them, how this government expects to be able to achieve implementation and enforcement of these rights.

Beyond that, I would have to go over my files.

CHAIRMAN FLEMMING. Could I just ask you which department moved to cut off funds for failure to enforce the law?

DR. BOWE. Labor.

VICE CHAIRMAN HORN. Commissioner Ruiz?

COMMISSIONER RUIZ. I have no questions.

VICE CHAIRMAN HORN. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Bowe, your complete paper that was submitted for the record indicates the nature of the problem relative to employment. I wonder whether you might briefly comment on other areas of civil rights problems such as housing and voting rights.

DR. BOWE. With respect to housing, the basic point to be made is that in this country something on the order of 1 percent of all apartments—I am not talking here about houses—are at least potentially accessible. There is nothing more depressing to me as I travel around the country than to have someone stand up and say, "Where will I be able to find a place to live?" Now, there is a bill working its way through Congress, or so they tell me, that would make some token improvements in this area. I am referring to Title VIII.

Now, we went over to the Congress and we said, "Well, it is very nice to banish discrimination in housing. It would be nice if it were possible for these people to get in." The Congress said, "Well, that would cost money and if you asked for that and we put that clause in, there is no way we are going to have a bill to show." So the situation as it stands now is that there is no provision in that law for any accessibility renovation.

Number two, the United States Government today without exception has devoted its efforts to building separate construction for disabled people and for elderly people, housing developments in which these people are offered the opportunity to live in an accessible location. There has been no attempt to date to do anything to open up most of the housing market. There has been no look at vouchers. There has been no look at tax incentives. There has been no look at any kind of even encouraging sort of stuff to help the private housing industry recognize the fact that, as my colleagues in Sweden tell me, every apartment house in the country will have disabled people in it during its lifetime and one out of every two houses in the entire country will have disabled people living in that house during its usable life.

With respect to voting rights, the Congress has had before it at virtually every session since I came to Washington a bill providing that disabled people are people like others and should be able to vote. These never even got to a hearing stage, to my knowledge. It is incredible that this has not happened. A lot of people with disabilities are forced to do an absentee ballot in order to vote, and this does bother a great many of them. This is so simple, so basic to the American way of life, and they are not even able to participate in it. This causes a great deal of concern. It is the kind of thing that begins to make you appreciate the fact that this country is not accessible.

There are a number of other areas as well.

**Vice Chairman Horn.** Commissioner-Designate Berry?

**Commissioner-Designate Berry.** I have three or four questions.

First of all, is it the case that Labor in fact cut off funds or simply moved to cut off funds, in the instance that you cite? Was it the Office of Federal Contract Compliance or someplace else?

**Dr. Bowe.** It was the Office of Federal Contract Compliance, and the move was made to cut off. As you know, there was an administrative proceeding and a hearing provision. To my knowledge the final cutoff has not yet been made. There will be someone testifying later this morning who will be able to expand upon that.

**Commissioner-Designate Berry.** The other question is about Title V. In your longer paper which you submitted to us, you point out that there is protection for "qualified" handicapped individuals; that is, those who meet the eligibility criteria. Are you suggesting you think there ought to be a change in the law, or are you just complaining about the budget?

**Dr. Bowe.** I raise the point because what this government is doing is ensuring that fewer and fewer people are protected each year. I was talking about the budget.

**Commissioner-Designate Berry.** The other is, is there specific data available on the cost-benefit ratios of training and educating disabled people as opposed to not training and educating them? Is there specific information available which would show the benefits?

**Dr. Bowe.** Yes, it is available. The Commission has it. It took me a book to answer the question.

**Commissioner-Designate Berry.** I see some of your colleagues out there shaking their heads no, but you are assuring me yes.

**Dr. Bowe.** Yes, it is there.

**Commissioner-Designate Berry.** If you could give us some further information about where to find such data, I would appreciate it. Not now, but at a later time.

**Dr. Bowe.** Okay. It is called *Rehabilitating America* and it is a whole book about nothing but the economics of disability and age.

**Commissioner-Designate Berry.** You say in your longer paper that at the time the 504 regulations were being issued that some university president said to Joe Califano that you were requiring them to retrofit and to do all these things for facilities that nobody would use. Is there any data available on how many people do in fact use facilities once they are retrofitted in universities and other places which would indicate that the university president was wrong?

**Dr. Bowe.** The university official I was referring to was complaining that people with disabilities may not be college-caliber people. I wanted to make the point very clearly that I do disagree.

With respect to the issues you raise about statistics, the Office for Civil Rights in the Department of Education has issued a report which indicates that something on the order of 40 to 45 percent of the Nation's colleges will meet the June 15 deadline for compliance with 504.

With respect to your question on availability of statistics as to how many people do use facilities once they are made accessible, the answer is that is in process, and let me explain why. It is not enough to remove a barrier in front of a building if you can't get to the building; it is not enough to put an elevator in a building if you can't get into the building; and it is not enough to put an elevator in a building if you can't get into a room in the building. So it is necessary to take a perspective in which we say, "We will have to remove a number of barriers so that a given trip can be made," before we can sit down and say, "How many people are making that trip?"

As you know, if you are going to Pittsburgh from Washington, you have to be able to go each step of the way in order to get to Pittsburgh. It does you no good to know that you can get from the terminal to the hotel in Pittsburgh if you can't get through the terminal in Pittsburgh.

So I would caution the Commission very strongly not to take too seriously a lot of the statistics that are being thrown around, especially in the case of transportation, where people are saying, "Well, you know, only 65 people use the subway each week." First of all, I would like to know who is counting. I mean, I am a disabled individual and I would like to know how many people would say, "Aha, one more." I would like to know what the definitions are. I would like to know where the counting is being done. I know that in the middle of the worst snowstorm in the history of this city, at least as long as I have been here, there was one count and that count was publicized nationwide, indicating that we are spending all this money and this number of people used the system and, therefore, the cost per ride provided was something like $35,000. Of course, everybody immediately grabbed hold of that and ran with it.

I would caution people to recognize that a cost per ride or a cost per unit of service is a ratio, and it is dependent as much on its numerator as on its denominator.

COMMISSIONER-DESIGNATE BERRY. Do you think the issue of how many people will use the service or might not use the service is really relevant to whether or not it should be made available and whether there ought to be a right to services? Do you think that all of this talk about budgets and cost-benefit ratios is really relevant to whether the services should be made available?

DR. BOWE. It is relevant. Let me tell you why. There are a number of different ways to do something, and I think disabled people in this country would stand behind me when we say we want it done. We are also conscious that the cost will be high. If it can be done and done right to serve people and be done at a reasonable cost, we would be very supportive of that. So there would be perhaps different numbers of people using different alternatives. It is relevant.

However, the basic point which I think you are getting at, and which I also want to reinforce, is that the debate must be held upon equal terms. It is relevant once the basic standard that people who have a right to what we will get has been established; once you are talking about equality, then we can begin to say, "Okay, given two equal alternatives, we can begin to discuss something about cost." This is not being done right now. People are talking about two totally, completely, and unarguably unequal alternatives and saying we should go with the less expensive of the two.

COMMISSIONER-DESIGNATE BERRY. Thank you. I have no further questions.

VICE CHAIRMAN HORN. Commissioner-Designate Ramirez?

COMMISSIONER-DESIGNATE RAMIREZ. I also want to thank you very much for your statement. Already it has made an impact on me and I appreciate your comments.

DR. BOWE. Thank you.

COMMISSIONER-DESIGNATE RAMIREZ. I was interested in your comments about what the captains of industry said to you in relation to the government, interested from the perspective of knowing exactly what strides are being made in employment and in opportunities in the private sector and how are they affected in the relationship between people with professional training and people who are in skilled or semiskilled jobs going into the private sector?

**Dr. Bowe.** What people in industry tell me is that they are rather confused by their government. If you take a look at regulations, for example, that govern this activity, the regulations are very explicit, very clear, very detailed on those matters that require no explanation; but on those that are confusing by themselves and do require details, the regulations are almost silent. So there is naturally quite a bit of confusion. What is reasonable about reasonable accommodation? Where do I get figures on who can build this for me? How much it will cost? All that kind of information they are telling me they don't have.

Now, my organization has tried to begin responding to that and so have a number of other organizations. With respect to the employment posture on, let's say, skilled versus managerial-professional kinds of activities, I would think that our employment pattern generally parallels that of many other minorities. A lot of our people are the last hired. They have been hired very recently. As the recession grows in our country, they will be among the first to be terminated. When they are hired, very likely they will remain on their job level longer than their able-bodied colleagues.

I don't have data that I am satisfied with on this point, but I do believe that the salaries generally would be lower. I am still not quite certain, because I am not quite sure of the nature of the statistics that are available. I want to look at that further.

But generally I would think that all of this follows a basic need: Industry has to be helped to understand, first of all, how the abilities of disabled people can be tapped and the disabilities can be minimized or accommodated; and, number two, what is the Federal Government's posture? That is somewhat confusing to a number of people in industry. They really don't know where their government is coming from, how serious their government is. They really don't know. They hear different things from different agencies, which confuses them.

**Commissioner-Designate Ramirez.** Just one more question. If you could share with us your perceptions of how minority persons who are also disabled fare in terms of those protections and the services of government.

**Dr. Bowe.** Terribly, terribly. First of all, there has been absolutely no effort, except as I have indicated, over the past year and a half to two years even to begin to look at that in a consolidated way. It has been in a bunch of completely separate enforcement activities. They don't even talk to each other. For that reason, of course, people who have characteristics in common across those two enforcement activities fall between the gap.

Number two, there is a prevalent notion, shall we say, of counting noses, and that does have an effect. If you want to increase the number of minority employees, you will increase the number of minority employees; you won't complicate your problem further by hiring someone who is in a minority who perhaps doesn't have so much education or perhaps has something else that might require an accommodation. I am disturbed by that whole thing.

Then, number three, the basic point comes up, if you are a disabled person, you must be qualified to be considered for protection. It is a fact—it has been shown again and again—that persons who are disabled who are also members of minority groups are denied an education or are denied medical care or denied any kind of opportunity to get vocational training. So when they get to the employment gatekeeper, they are at a disadvantage.

I just want to stress what I said earlier: terribly. It has been a concern of mine for 10 years and I have been totally unhappy with the progress in that area.

**VICE CHAIRMAN HORN.** Commissioner-Designate Ruckelshaus?

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** Dr. Bowe, I want to thank you very much for giving me the opportunity to read your paper. It has been very helpful.

**DR. BOWE.** Thank you.

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** Let's suppose—because you made a point that I think is certainly central to this issue—that the Federal Government has to play a lead role in educating and setting the tone of understanding and commitment for the rest of the country. Let's suppose that, given an enlightened set of events that may occur, you became the advisor to the Domestic Council and you had to develop for the first 18 months of your administration a priorities list that would include executive commitments, policy statements, and perhaps legislative proposals of some kind. Could you fashion a priorities list of four or five major objectives that you might share with us?

**DR. BOWE.** Well, I would think that I would urge the President, first of all, to articulate himself this policy and instruct all of his spokespersons, including his cabinet officials, that this was a major priority for the administration.

It never ceases to amaze me that Secretary after Secretary will make comments about employment in their agencies or enforcement of their rights. They will talk about women, they will talk about minorities, and that is it, period.

Number two, I would ask the President to examine the relationship between the dependence programs, supplemental security income, SSDI, medicare, medicaid, and the training and enforcement programs, because I think that no one has looked at them together. I think they would find some rather amazing things about giving with one hand and taking with another that I think would absolutely astonish this administration.

I would then require as a matter of programmatic policy that any new initiative that might affect disabled people take into account the fact that the President has established this objective. There is no disability impact statement and there is no effort, to my knowledge, to review, for example, the proposed jobs program for minority youths or any other such initiative and say, "What will this do to help America's 36 million disabled people? How can we help those people while we are doing this?"

I would set forth that the administration would place as head of a number of the enforcement programs people with experience in this area, preferably who also are disabled, and would establish clearly that the President is going to be behind these people; he believes in these people; he is putting them in charge of these programs; and he will stand up for them.

I think I would establish in the same office of the assistant to the President the enforcement—shall I say the directive—power to compel any agency which is not complying with the schedule for issuing guidelines to come into line. I would put that authority squarely right there in the White House in the West Wing and stick it there and stay with it and let the Secretaries know very clearly that the President intends that this will be done.

Now, I do wish to point out that I am not seeking to serve in this capacity.

VICE CHAIRMAN HORN. Staff Director Nuñez?

MR. NUÑEZ. Just one question, Dr. Bowe. You mentioned a figure of 36 million handicapped persons in the United States. How would you break that figure down and where do those estimates come from?

DR. BOWE. Those estimates come from a number of different sources. They come from the United States census in 1970. They come from a number of followup surveys conducted by the Social Security Administration between 1972 and 1978. They come from a study by the Urban Institute conducted for HEW in 1975. And they come from a number of other sources, some of them national, some of them international.

But I have found—and I am quite satisfied in being correct about this—that the prevalence rate represented by the 36 million figure is an accurate worldwide prevalence rate. Anyone who examines, for example, the numbers of people served by disability insurance (supplemental security insurance, medicare, medicaid) will begin very quickly to sense that that figure is not too far off.

Now, I must qualify all this by saying that these are all estimates. Nobody knows. We don't know. We don't know how many people have disabilities in our country. The number could go from 20 million to 50 million or beyond, depending on how we define disability. But I am satisfied that this is not an overblown figure by any means. That is a figure I am completely comfortable in using.

VICE CHAIRMAN HORN. Thank you very much, Dr. Bowe. Your examples, the testimony, and the tone that you have set for an overview in this hearing will be and already have been invaluable to members of the Commission as we formulate recommendations to the President and the Congress to deal with some of these longstanding problems.

As one who early in the seventies argued for the handicapped to be added to the jurisdiction of this Commission, I am delighted that at long last we are getting experts of your caliber before us to share your life experiences and your expertise in this area.

Thank you for coming.

DR. BOWE. Thank you.

[Applause.]

## Federal Initiatives

VICE CHAIRMAN HORN. Will Mr. Charles W. Hoehne come to the stand, please.

# FEDERAL INITIATIVES: ACCOMPLISHMENTS OF THE 1977 WHITE HOUSE CONFERENCE ON HANDICAPPED INDIVIDUALS

By Charles W. Hoehne*

Thank you for inviting me to be with you at this meeting. It is an honor to be a part of the Commission's initiatives in behalf of individuals with disabilities. On behalf of the National Implementation Advisory Committee to the White House Conference on Handicapped Individuals, I express appreciation for the interest, concern, and effort manifested by the U.S. Commission on Civil Rights.

It has now been almost 3 years since 3,700 persons from every State and territory assembled in this city for the White House Conference on Handicapped Individuals (WHCHI). They came here as representatives of the more than 100,000 individuals who earlier had participated in related conferences at the local, State, and territorial levels. By the time WHCHI was concluded, the participants had considered and assigned priority to 3,548 recommendations evolving from the previous State and territorial proceedings.

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The basic purpose of those recommendations was to facilitate the more effective integration of individuals with disabilities into the mainstream of American life. And, in broad effect, what WHCHI amounted to was merely a simple call for greater equality under the law.

That call continues to be inadequately heard and insufficiently responded to throughout the United States. Because of this, the proceedings which are being held here today and tomorrow are particularly gratifying and refreshing.

## Congruities and Incongruities

In an indirect and unspecific manner, the U.S. Commission on Civil Rights has for some time been impacting upon disability issues, concerns, and problems. Such an effect, while perhaps primarily inadvertent, necessarily and inevitably obtains as a consequence of the Commission's discharge of its traditional mandate.

Disability does not respect race, creed, national origin, color, or sex. Persons from throughout all economic classes and social stations can, and do, become disabled.

But many disabilities occur as a result of disadvantage and deprivation. The incidence of various types of disabling conditions is significantly influenced and heightened by factors such as improper nutrition, inadequate medical care, and substandard housing.

Disadvantage and deprivation are the end products of patterns or processes of discrimination. Disabling conditions, therefore, are all too frequently byproducts of the same processes or patterns. That is why minorities are represented to a disproportionately large degree among America's 35 million citizens who have disabilities.

To the extent, then, that Federal effort effectively ensures the basic rights of, and equal opportunities for, protected classes, such effort has favorable, if indirect, implications for individuals with present or potential disabilities.

Yet, as WHCHI so abundantly established and documented, the adequate protection of the more basic rights of handicapped individuals demands a considerably more specific and effective effort. The implementation plan for WHCHI recommendations states the situation and the need in these terms:

> The basic human and legal rights of handicapped individuals are more than rhetoric. A growing body of judicial decisions is establishing that constitutional guarantees of equal protection and due process extend to handicapped individuals. These constitu-

> tional protections are strengthened by Federal, State and local statutes enacted to assure attentiveness to the needs—and potential—of individuals who are handicapped in such particular areas as education, employment, accessibility, housing, alternative living accommodations, leisuretime pursuits, public transportation and voting.
>
> The entire [White House] conference record overwhelmingly reflects that formal articulation of a right is one matter; the general enjoyment of that right is quite another. It should not be necessary to vindicate basic rights of handicapped individuals on a case by case basis in local communities throughout the Nation. Instead, legislation must be restated with greater force and precision. More adequate administrative mechanisms for enforcement are needed. . .

Individuals with disabilities have frequently been referred to as a "hidden minority." If substantially hidden, this special population nonetheless represents the largest minority group in this country. The disabled population also represents, for the most part, the most disadvantaged and deprived group within our society. Disabled persons are inhibited and impinged upon by all the problems which have historically confronted other minority groups or currently protected classes, but those problems are for handicapped individuals compounded by the exceptionality of disability.

The various reports issued following WHCHI are lengthy both in number and in content. Throughout all those reports, it is made plain that individuals with disabilities have been and continue to be subjected to massive discrimination. Discrimination can be rooted in different types of motives and manifested in various ways. This Commission and its staff are thoroughly familiar with the more invidious forms of discrimination which are primarily prompted by ignorance, prejudice, and economics.

What handicapped individuals are subjected to is perhaps a less virulent and more subtle form of discrimination. Here, too, ignorance is a factor; myths, misconceptions, and unenlightened attitudes about handicapped individuals and handicapping conditions account largely for the discrimination encountered by all too many individuals with disabilities.

If perhaps more benign in its underlying motive, this latter type of discrimination is nevertheless as insidious and as intolerable as any other type. The end products, disadvantage and deprivation, are exactly the same in either case.

The reality of this situation represents the broadest finding of WHCHI. It is a finding that cuts across all the functional areas, topical categories, and specific subjects that were addressed. And the amelioration of this situation represents, in a broad and general sense, the most fundamental recommendation evolving from the conference.

## *WHCHI Specifics*

An exhaustive examination of all the major findings and recommendations of WHCHI is not possible within the time available today. Nor is comprehensive review and discussion of all that evolved from the various WHCHI proceedings appropriate to the purposes of this particular meeting.

By way of basic overview, it will be recalled that the various actions voted and recommended as a result of WHCHI were broken down and classified under these major headings:

A. Architectural Accessibility and Safety
B. Attitudes and Awareness
C. Civil Rights
D. Communication
E. Cultural and Leisure Activities
F. Economics
G. Education
H. Government Organizations and Practices
I. Health
J. Housing
K. Services to Disabled Veterans
L. Special Populations—Handicapped Aged Persons, Minority Handicapped Persons
M. Transportation

With regard to the status of the many actions recommended, the cover of the final report of the National Implementation Advisory Council to WHCHI aptly summarizes the situation in its main title: *Some Progress Has Been Made. . .But Not Enough. . .*

Under the civil rights heading alone, delegates voted that 50 specific actions be taken. Legislation enacted in 1978 was responsive to some of these recommended actions, but most of the action steps have not been taken, and implementation of the 1978 legislation continues to remain substantially deferred.

With regard to disabled veterans, a major finding was that this population faces a particular kind of problem because their disabling condition precludes their continuation in active military service and because the Federal and State governments have established a separate system with specific methods to deal with their disabling conditions. Conference delegates strongly reaffirmed the magnitude of these problems by calling for improved Veterans Administration programs and civilian mental health and physical health services as well as psychological and social services to assist the disabled veteran, including ethnic and cultural minorities. Twenty specific actions were recommended.

The Veterans Administration has been carrying out training and other activities to strengthen its rehabilitation services for disabled veterans; requests for proposals are out for the evaluation and improvement of special aids, appliances, and technological devices. No one purports, however, that progress has been as rapid or massive as is desirable.

As part of the overall conference, during February of 1977, 11 workshops were held in communities heavily populated with minorities. The purpose of these meetings, which were held in all parts of the United States, was to increase input from handicapped individuals who are nonwhite or of Hispanic ancestry.

The special problems of handicapped aged persons were addressed, as were the exceptional circumstances of handicapped Native Americans and the unique needs of handicapped individuals in the Trust Territory of the Pacific Islands. The major finding of this effort in behalf of special populations of handicapped individuals is expressed in the following language:

> The general problems of neglect and inadequate provisions which occur for all handicapped persons are even greater for persons who are also members of ethnic minority groups. Similarly, the unique needs of the rapidly growing population of elderly handicapped persons have also been neglected in the development of national policies on behalf of all mentally and physically handicapped persons.
>
> . . .The problems of special populations with handicaps do not exist in isolation. It was evident that recommendations, to be meaningful, would require that emphasis on appropriate services and programs be specified in each of the topic areas. . . .

Eleven specific recommendations pertaining to the unique circumstances of handicapped individuals who are nonwhite or of Hispanic ancestry evolved from the workshops held in communities heavily populated with minorities.

Specific implementation action responsive to the findings and recommendations related to special populations of handicapped individuals has been less than auspicious. The 1978 amendments to the Federal Rehabilitation Act contain a number of provisions designed to strengthen and facilitate services to handicapped Native Americans but, as with the 1978 amendments as a whole, these provisions are substantially in await of implementation.

And to the extent that the special problems of elderly handicapped individuals are being addressed, the primary illustration of this seems to be not in public programs, but instead in the coalition that is at this time being developed between consumer advocacy groups composed of individuals with disabilities or individuals who are elderly.

There are those who would argue that the basic condition of handicapped individuals in the United States has in fact worsened since the White House Conference was held 3 years ago. The problems of energy, inflation, and growing unemployment, after all, tend to impact more brutally upon individuals who frequently do not have the range of coping alternatives available to persons who are not handicapped.

In the introductory section of the National Implementation Advisory Committee's final report, the present situation is seen in this perspective:

> America is now in the Eighties, approaching the end of this century. The society is more complex, needed goods are more costly, resources are dwindling, and competing interests for these goods, services, economic and natural resources are growing.
>
> The times are difficult for all of us. For handicapped individuals, the times are the most difficult of all. The issues of inflation, energy, affordable, accessible education and training, jobs and upward mobility, food, housing, transportation, health and rehabilitation services are sharply focused within the constraints of today's economics and priorities. . . .

Yet, the situation is not entirely dismal and without hope. Public Law 95-602 (the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978) is, insofar as Federal initiatives in behalf of handicapped individuals are concerned, truly legislation of historic and milestone dimensions. Public Law 95-602 establishes a specific statutory basis and conceptual framework for improved opportunities and greater independence on the part of individuals with disabilities. Perhaps most significantly of all, this legislation contains important provisions to clarify, to advance, and to ensure the better enforcement of the human and civil rights of handicapped individuals.

The problem is that Public Law 95-602 (signed on November 6, 1978) remains substantially unimplemented. Nor are there any reasonable prospects that this legislation will be more adequately and more effectively executed anytime in the foreseeable future.

My fellow panelist, Frank Bowe, has written two books that clearly describe why this situation is highly detrimental not merely to handicapped individuals, but to all Americans. His analysis very soundly and quite convincingly demonstrates how this denial of the basic human and civil rights of individuals with disabilities, together with the associated insufficiency or absence of adequate and appropriate services, enormously complicates basic problems of inflation and taxation.

I shall not attempt within these time limits and this format to review what Dr. Bowe has established. Instead, I shall simply offer two suggestions.

The first of these is that the fact that this meeting is taking place provides an additional basis for hope and encouragement on the part of those who are concerned about disability issues and the rights of individuals with disabilities.

The second suggestion is that the United States Commission on Civil Rights can, through a logical progression of its current efforts and through the natural evolution of its traditional focus or mandate, make an enormously positive and greatly needed contribution in this area.

Let me explain what I mean.

## *Federal Initiatives*

Beginning with legislation aimed at the rehabilitation of disabled veterans of World War I, proceeding with the enactment of the Vocational Rehabilitation Act of 1920, and continuing with the authorization and establishment of additional programs and services since that era, it has been Federal initiative that has been at the forefront of this field. It has been, throughout the greater part of this century, Federal action that has catalyzed and provided the more substantial basis for meaningful improvements in the daily lives of individuals with disabilities.

The National Planning and Advisory Council to WHCHI reviewed the findings and recommendations evolving from the various conference proceedings. The Planning and Advisory Council then formulated a basic implementation plan and strategies for the execution of that plan.

Several components were of central importance to the plan and strategies. One component was the formulation and issuance of a strong national policy to ensure that individuals with disabilities may participate fully in our society with full enjoyment of its benefits. A clearly expressed, visible, convincing national commitment to such a policy was requested. Closely related to this were recommendations designed to guarantee the better enforcement and improved enjoyment of the basic human and civil rights of individuals with disabilities.

What was recognized then, and what must be recognized now, is that it frequently is not a disabling condition itself that most handicaps or restricts an individual; rather, it too commonly is the attitudes about disabilities and the levels of awareness that most greatly limit persons with disabling conditions. The recognition of this abundantly documented reality is what prompted the National Planning and Advisory Council to state one of the conference's more major findings in this language:

> Although handicapped individuals do need certain accommodations, they have the potential of being integrated into all facets of daily life. This integration can be made possible through a change in public attitude. Awareness by the public of the capabilities of handicapped persons must be stimulated to assure them the same social and civil rights enjoyed by all the people of these United States.

There is no better way to foster better attitudes, awareness, understanding, and acceptance than by focusing upon and emphasizing the basic civil and human rights of the vulnerable.

Insofar as handicapped individuals are concerned, Federal initiatives traditionally have encompassed more than legislation and appropriations for grants-in-aid. An exhibition of empathy and understanding, accompanied by the provision of a constructive example, also can represent extremely meaningful Federal initiative, particularly in this instance and area.

This meeting provides exactly that type of display. I urge that the Commission continue in its initiative.

Thank you very much.

**VICE CHAIRMAN HORN.** Mr. Hoehne is the executive vice president of Consultant Services, Incorporated, a former member of the White House Conference's Advisory Council on the Handicapped. He is an attorney in private practice in Austin, Texas, specializing in disability issues. He is general counsel for the Rehabilitation Services Associates, Incorporated, which is a private rehabilititation agency providing direct rehabilitation services to injured, disabled workers. He has had two decades of experience in State legislative and human services programs and has been involved in numerous State conferences affecting the handicapped, including the White House Conference on Handicapped Individuals. He has been a primary draftsman of the final reports of that Conference and written a number of books and articles in this area, his latest being *The ABCs of Independent Living, Rehabilitation Services* , and *Public Law 95–602: Implementation Issues, Challenges and Obstacles* . We are delighted to have you with us. If you could summarize your paper, we, of course, will insert the original in the record.

## STATEMENT OF CHARLES W. HOEHNE, EXECUTIVE VICE PRESIDENT, CONSULTANT SERVICES, INC., AUSTIN, TEXAS

Mr. Hoehne. Mr. Chairman and Commissioners, I thank you for the opportunity of being here. I know that I speak for all of the people who served on the National Implementation Advisory Committee to the White House Conference when I express appreciation for the interest, concern, and initiative that the Commission is starting to exert.

It has been almost 3 years since 3,700 persons from every State and territory assembled in this city for the White House Conference on Handicapped Individuals. They came here as representatives of more than 100,000 people who had earlier participated in related proceedings at the local, State, and territorial levels throughout the United States preliminary to the national conference here in Washington. They considered and assigned priorities to 3,548 recommendations, performed an enormous amount of work, and established a basis for a series of reports that now provide a very detailed blueprint of the action required to meet the needs of disabled citizens of this country.

In broad effect, what the whole White House Conference amounted to was merely a simple call for greater equality under the law. But that call still hasn't been heard and responded to very effectively in this Nation.

The area you are now getting into isn't really all that new to the United States Commission on Civil Rights because, as Dr. Bowe pointed out earlier, disability occurs disproportionately among people who are disadvantaged and deprived. You have been involved in fighting discrimination for a long time. I think that what you are moving into now is nothing other than a natural progression or evolution of your traditional mandate.

The reports of the White House Conference represent a thoroughly documented statement of unmet human needs, but these reports also represent, as I said earlier, a quite specific and detailed blueprint for action. There is, in fact, a very comprehensive implementation plan. Right up front in that implementation plan, there is a statement that I think is very appropriate to this conference today. The statement reads:

> The basic human and legal rights of handicapped individuals are more than rhetoric. A growing body of judicial decisions is establishing that constitutional guarantees of equal protection and due process extend to handicapped individuals. These constitutional protections are strengthened by Federal, State, and local statutes enacted to assure attentiveness to the needs and potential of individuals who are handicapped in such particular areas as education, employment, accessibility, housing, alternative living

> accommodations, leisuretime pursuits, public transportation, and boating.
>
> The entire White House Conference record overwhelmingly reflects that formal articulation of a right is one matter, but the general enjoyment of that right is quite another matter. It should not be necessary to vindicate basic rights of handicapped individuals on a case-by-case basis in local communities throughout the Nation. Instead, legislation must be restated with greater force and precision. More adequate administrative mechanisms for enforcement are needed.

That is central to the entire implementation plan that came out of the White House Conference.

Individuals with disabilities are frequently referred to as a "hidden minority." If they are substantially hidden, this special population nevertheless represents the largest minority group in the country. It also represents the most disadvantaged and deprived group in the country.

The reports issued as part of the White House Conference are lengthy both in number and content, but throughout all those reports it is very plain that individuals with disabilities have been and continue to be, as Dr. Bowe earlier this morning pointed out to you, subjected to massive discrimination in this country. It is not the kind of discrimination that is based on invidious motives, but on ignorance, myth, misconceptions, a lack of awareness, and a failure of understanding. But it is there.

Within the time frame that we have this morning—I realize we are probably running somewhat behind schedule—it is not possible to examine everything contained in the White House Conference reports, but such an examination is really not essential to the discharge of your new mandate. Simply by way of refreshing your memory, you recall that in the final reports the findings and actions recommended were broken down into these major headings: architectural accessibility and safety; attitudes and awareness; civil rights; communication; culture and leisure activities; economics; education; government organization and practices; health; housing; services to disabled veterans; and then special populations: handicapped aged persons and minority handicapped persons; and transportation.

With regard to the status of many of the actions recommended, the cover of the final report of the National Implementation Advisory Council to the White House Conference aptly summarizes the situation in its main title, which reads, *Some Progress Has Been Made. . .But Not Enough. . . .*

Under the civil rights heading of the reports, delegates voted that 50 specific actions be taken. Legislation enacted in 1978—I am referring to Public Law 95-602—was responsive to some of these recommended actions, but most of the action steps have not be taken and, as Dr. Bowe pointed out earlier this morning, implementation of the legislation continues to remain substantially deferred.

With regard to disabled veterans, for example, a major finding of the White House Conference was that this population faces a particular kind of problem because their disabling condition precludes their continuation in active military service and also because Federal and State governments have established a totally separate system with specific methods to deal with the disabling conditions of veterans.

Conference delegates strongly reaffirmed the magnitude of these problems by calling for improved Veterans Administration programs and civil mental health and physical health services as well as psychological and social services to assist disabled veterans, including ethnic and cultural minorities. They recommended 20 specific actions.

The VA now has been carrying out training and other activities to strengthen its rehabilitation services to disabled veterans, and there are some requests for proposals out to evaluate and improve special aids, appliances, and technological devices. But no one purports that progress has been as rapid or massive as would be desirable.

As part of the overall conference, in February of 1977, 11 workshops were held in communities heavily populated with minorities. The purpose of these meetings—and they were held in all parts of the United States—was to increase the input from handicapped individuals who were nonwhite or of Hispanic ancestry. The special problems of handicapped aged persons were addressed, as were the exceptional circumstances of handicapped Native Americans and the unique needs of handicapped individuals in the Trust Territory of the Pacific Islands.

The major finding of this effort in behalf of special populations of handicapped individuals is expressed in the following language:

> The general problems of neglect and inadequate provisions which occur for all handicapped persons are even greater for persons who also are members of ethnic minority groups. Similarly, the unique needs of the rapidly growing population of elderly handicapped persons have also been neglected in the development of national policies on behalf of all mentally and physically handicapped persons.
>
> The problems of special populations with handicaps do not exist in isolation. It was evident that recommendations, to be meaningful, would require that emphasis on appropriate services and programs be specified in each of the topic areas covered in the report.

To the extent, Mr. Chairman and members of the Commission, that the special problems of elderly handicapped individuals are being specifically addressed, the primary illustration of this is not in public programs, but instead is found in the action which consumer organizations, coalitions of disabled individuals, and associations of elderly handicapped are themselves putting together.

There are some, I think, who would argue with a lot of force and merit that the basic condition of handicapped individuals in the United States has in fact worsened in the 3 years since we had the White House Conference in this city. The problems of energy, inflation, and growing unemployment, after all, tend to impact more brutally upon individuals who do not have the range of coping alternatives available to persons who are not handicapped.

In the introductory section to the National Implementation Advisory Committee's final report, the present situation is seen in this perspective:

> America is now in the eighties, approaching the end of this century. The society is more complex. Needed goods are more costly. Resources are dwindling and competing interests for these goods, services, economic and natural resources are growing.

The times are difficult for all of us. For handicapped individuals, the times are the most difficult of all. The issues of inflation, energy, affordable and accessible education and training, jobs and upward mobility, food, housing, transportation, health and rehabilitation services are sharply focused within the constraints of today's economics and priorities.

You asked earlier about bright spots. There really aren't that many. If I had to identify one, it would be the enactment of Public Law 95–602. The Rehabilitation Services and Developmental Disabilities Act Amendments of 1978 is really a major milestone piece of legislation in terms of services to individuals with disabilities. But the law was signed on November 6, 1978, and, for the most part, it continues to remain unimplemented.

The legislation does, though, contain important provisions to clarify, to advance, and to ensure the better enforcement of the human and civil rights of handicapped individuals. You should—and by hundreds of thousands of individuals throughout this Nation as they learn of your initiative, you will—be applauded for becoming interested in and moving forward with this effort to better effectuate the declared public policies of this land.

Dr. Bowe cited one of his books this morning when he discussed some of the economics of disability and the superciliously inverted way in which national resources are allocated for the barest subsistence and support of handicapped individuals, keeping them alive but not allowing them to become productive and independent. He has, actually, written two books that address this deplorable situation and the issues which the situation presents. I am not going to be redundant by trying to cover ground that he has already covered very masterfully, but there is, from my perspective, hope and encouragement simply in the fact that this meeting is taking place.

The United States Commission on Civil Rights can, as I said earlier, aggressively undertake what I regard as a very logical progression of its current efforts and, through the natural evolution of its traditional focus or mandate, make an enormously positive and greatly needed contribution in this area. Let me explain what I mean.

The Federal Government has preeminently throughout this century been the catalyst for bringing about improvements in services for individuals with disabilities. It started in 1918, in large part, with the enactment of legislation directed toward the rehabilitation of veterans who were disabled in World War I. The program became so effective that in 1920 the Congress extended it to the civilian population. Since 1920 and continuing through 1978, the legislation periodically has been refined, strengthened, and improved upon.

The National Planning and Advisory Council, which was the group that assisted in carrying out the White House Conference 3 years ago, reviewed the findings and recommendations that evolved not only from the national meeting here in Washington, but from all the thousands of meetings that took place in States and at regional levels within the States. That Council formulated a basic plan with strategies for accomplishing and achieving the goals and improvements which disabled individuals themselves said they needed in order to become more independent and self-sufficient. Several components were of central importance to the plans and strategies developed by the National Planning Advisory Council.

One component, which I think is extremely pertinent to why you are here today, was the formulation and issuance of a strong national policy to ensure that individuals with disabilities may participate fully in our society, with full enjoyment of its benefits. A clearly expressed, visible, and continuing national commitment to such a policy was requested.

Closely related to this component of the implementation recommendations were other recommendations designed to guarantee the better enforcement and improved enjoyment of the basic human civil rights of individuals with disabilities.

What was recognized then, and what I hope is recognized now, is that it frequently is not a disabling condition itself that most handicaps or restricts individuals with disabilities; rather, it too commonly is the attitudes that others have about disabilities and their levels of awareness—or lack of levels of awareness—that most greatly limit persons with disabling conditions.

The recognition of this is what prompted the National Planning and Advisory Council to state, as one of the conference's major findings, the following:

> Although handicapped individuals do need certain accommodations, they have the potential of being integrated into all facets of daily life. This integration can be made possible through a change in public attitudes. Awareness by the public of the capabilities of handicapped persons must be stimulated to assure them the same social and civil rights enjoyed by all people of these United States.

There is no better way to foster improved attitudes, awareness, understanding, and acceptance than by focusing upon the basic civil and human rights of people who are vulnerable. Insofar as handicapped individuals are concerned, Federal initiatives traditionally have encompassed more than just legislation and appropriations for grants-in-aid.

An exhibition of empathy and understanding, accompanied by the provision of a constructive example, also can represent extremely meaningful Federal initiative, particularly in this instance and area. This meeting provides that kind of display, and I urge the Commission to continue in its initiative.

**VICE CHAIRMAN HORN.** Thank you very much. We appreciate your testimony.

Our next panelist on this section on Federal initiatives is Deborah Kaplan, a private attorney and consultant, a former chairperson of the National Disabled Women's Caucus at the White House Conference.

Ms. Kaplan is from Oakland, California, where she has a private practice and is a consultant on handicapped issues. In 1976 she founded the Disability Rights Center, which is an employment advocacy group. She is extremely active in numerous communities and other boards and councils, and appeared at several caucuses, including the National Disabled Women's Caucus at the White House Conference, as I mentioned, which was held in May 1977. She has provided legal research and technical assistance preparing briefs and conducting training sessions on the legal rights of the disabled under section 504 of the Rehabilitation Act of 1973. She will discuss Federal employment and the handicapped.

If you could summarize your paper in about 15 to 20 minutes, we would appreciate it.

**MS. KAPLAN.** If you want to wave at me when 15 minutes comes, that would be helpful.

VICE CHAIRMAN HORN. Okay.

# FEDERAL INITIATIVES: EMPLOYMENT OF DISABLED PEOPLE IN THE PUBLIC SECTOR

By Deborah Kaplan*

While the major subject of this paper is employment of disabled people in the public sector, I would like to take the opportunity first to address the general topic of civil rights and disabled people. It is extremely important to the disabled community that the U.S. Commission on Civil Rights has been granted jurisdiction to extend its activities to the area of civil rights and disabled citizens. It represents a recognition by the U.S. Congress that our civil rights are worthy of study and protection; it also brings us more strongly into the civil rights "family" of protected groups with whom we have already established close working relationships. The period ahead of us will be a time for developing closer ties and trusting bonds, for putting aside differences and jealousies. We stand to gain more together than we ever could separately, and we are all becoming acutely aware of what we stand to lose if we cannot stand together.

The disabled community has many strengths to bring to the civil rights movement. Many of our supporters and allies are from outside the civil rights arena. We are as diverse a group as the entire U.S. population. Our families and friends are found throughout the country. It is incumbent upon us to be strong advocates of the proposition that the denial of civil rights to any group hurts us as well. It will also be our job in the future to remind the leaders of other civil rights groups that a substantial number of their own people are also members of our constituency. The civil rights community is enriched by our presence, for our efforts to achieve independence and equality for ourselves will directly enhance the lives of blacks, Latinos, women, and other protected-class members with disabilities.

## *The Role of the Public Sector in Employment*

The public sector has a major role to play in increasing the opportunities available to disabled people in employment. Although many changes are needed, and true equality of opportunity has yet to emerge, it is also true that public employment has been more available to disabled people than in the private sector. A close examination of the issues reveals, however, that we are still only making relative comparisons. For far too many disabled Americans, discrimination in employment, public or private, is the rule.

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* Deborah Kaplan is an attorney and consultant in Oakland, California.

All levels of government, from Federal to local, have an obligation to serve as models in eradicating discriminatory practices from their employment policies. There are countless statutes that are enforced by Federal agencies, State bureaus and departments, and county commissions which prohibit discrimination against disabled people in employment, public accommodations, housing, service delivery, and through architectural barriers. All segments of the community, including private businesses, disabled groups, and individual citizens, can readily spot the hypocrisy inherent in the unequal treatment of disabled job applicants and employees by government entities that are purporting to end discrimination by the private sector. The result is that disabled people develop an often-justified distrust of the enforcing agencies. Private sector businesses and institutions either realize that the law will not be strictly enforced against them, or else they lose respect for the system. All of this drastically undermines the civil rights of disabled people.

Public sector employment offers a wide variety of employment opportunities for disabled people. This means that people with all types of disabilities and training or professions have a greater chance of finding the job for which they are most qualified. Because many public agencies and departments employ relatively large numbers of people, there is a greater likelihood that job restructuring and other methods for accommodating disabled employees can be managed without subjecting the agency to an undue hardship. All this enhances the attractiveness of public sector employment for disabled people.

There are public policy reasons for employing disabled people in government jobs as well. Disabled people must be perceived by the public as an integral part of government on a highly functional level. By employing disabled people in a broad variety of positions, many with direct public contact, a government agency is making a statement, although it is through actions rather than words. Public relations campaigns, posters, and "National Hire the Handicapped Week" are poor substitutes for the real thing: disabled people performing a broad variety of public service functions competently and efficiently.

For the same reasons, it is imperative that disabled people be actively recruited for leadership positions within government agencies. Disabled persons must be involved in setting priorities, developing policies, and actively providing leadership to public programs. It is an embarrassment when Secretary Patricia Harris makes public statements deploring the lack of minorities and women in higher level positions at HEW (now HHS) with no reference at all to the greater void of disabled people at the top of that agency. It is not enough to hire a token disabled person to lead an agency that deals exclusively with disability programs. Of course, disabled individuals should head such departments, but we should also find disabled representation at policymaking levels throughout the public sector.

## The Record of the Public Sector

*Federal:* Since 1948, the Federal Government has been prohibited by statute from discriminating against disabled people in employment.[1] However, the wording of the statute is indicative of the negative stereotypes about disabled people of that time with its express requirement that the disabled person not present a hazard to himself or others on the job. While a concern for safety is legitimate with respect to all employees, such statutory language exposes an underlying assumption that disabled workers are more prone to injuries on the job and/or are more likely to use poor judgment in choosing employment. Such assumptions are offensive and not supported by experience.

During the period between 1948 and 1973, the Federal Government initiated the selective placement program in the Civil Service Commission (CSC, now the Office of Personnel Management) to expand employment opportunities for disabled people. Major underlying concepts of this program were that disabled people needed to be carefully screened into appropriate positions, there being many positions from which it was felt people with disabilities could be categorically excluded, and that disabled people needed to prove to the government and their supervisors and coworkers that they were qualified and competent by performing successfully on the job for lengthy periods of time with virtually no job security. During this time special appointing authorities were initiated for agencies to hire disabled people without going through competitive procedures. Based on the premise that qualified disabled people might not be able to compete with other applicants successfully, the "schedule A" appointing authorities began to be used to hire disabled people outside of regular processes.[2] Unfortunately, employees hired this way were not protected against adverse actions and had no access even to internal grievance procedures to seek redress for unfair treatment. Thus, an agency could take the "risk" of hiring a disabled employee and, if dissatisfied for whatever reason, could end the experiment rather abrubtly.

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[1] 62 Stat. 351, ch. 434, June 10, 1948, amended by Pub. L. No. 89-554, 5 U.S.C. §7153 (1966).

[2] 5 U.S.C. §3302, 5 C.F.R. 315.703(d), 5 C.F.R. 213.3102(t), 5 C.F.R. 213.3102(u), FPM letter 306-17.

All of this is not meant to imply that the selective placement program was not a marked improvement over past practices or the private sector. Many disabled people were brought into the Federal Government during this period. One disabled young man graduated from a prestigious eastern law school in 1964 in the top 10 percent of his class with such distinctions as membership on the law review, the directorship of the school's legal research group, and the vice presidency of his law school. In his third year of law school he applied to 39 law firms, with whom he had personal interviews. He did not even receive a written rejection from one of them. In fact, he was told by some firms that he could not be hired because of his disability. In the next year, he applied for a position at two Federal agencies and was accepted by both.

The selective placement program's shortcomings were consistent with prevalent social attitudes of the times. Disabled people tended to be seen as dependent and relatively worthless to society. Charity, rather than rights, was dispensed and could be terminated if not gratefully accepted. These attitudes and practices also existed within the Federal Government to a certain extent, although a primary objective of the selective placement program was to change these attitudes through a kind of gentle persistence. Civil rights, though, was not the focus or perspective.

The problem we face today is that the Federal Government's affirmative action program for disabled people is built upon an outdated foundation. Because the system tended to beg for favors for disabled people, and was in fear of the effects of demanding rights, it has been difficult to change from "selective placement" to affirmative action accompanied by job accommodations, removal of barriers, ending the practice of job stereotyping, and true upward mobility for disabled employees.

In 1973 Congress enacted section 501 of the Rehabilitation Act, requiring Federal departments and agencies to implement affirmative action plans with CSC as the enforcer and monitoring agency. It also established the Interagency Committee for Employment of the Handicapped, which serves to study and eliminate barriers to full employment equity for disabled people and also oversees the agency affirmative action plans.

In 1977 a disabled woman sued the Federal Government for employment discrimination. One of her obstacles was that CSC had no procedure for administratively handling disability discrimination complaints and CSC was taking the position that it was not legally or otherwise obligated to provide such a procedure even though such discrimination was prohibited.[3] The Federal court ordered CSC to implement a complaint procedure for disabled people to seek redress from illegal discrimination, and that started the rulemaking procedure to put in place the complaint procedure.

A significant factor in the development of those procedures was the extent to which disability organizations were directly involved. Although the proposed regulations were grossly inadequate as originally proposed, CSC was responsive in meeting with representatives of the disability community, who had formed a coalition specifically to deal with this issue, granting extended time to develop comprehensive recommendations and to meet again to discuss the substantive rules. Since then people with disabilities have been involved in providing more guidance and positive criticism: The lines of communication are fairly open. The disabled community was instrumental in seeing that the section 501 program was transferred to the Equal Employment Opportunity Commission (EEOC), together with other Federal EEO programs, rather than remaining at CSC as originally proposed.

Because of the surveillance and constant input from the disabled community, the system is more sensitive and responsive than before 1973. Several meetings have been held with Chair Eleanor Holmes Norton, and those lines of communication are also open. Goals and timetables are now a central requirement of the section 501 affirmative action requirements; they were originally requested in a petition to CSC and EEOC from a multitude of disability groups. The Office of Personnel Management has revised its medical requirements that apply to all competitive service jobs to make it easier for disabled people to enter the government. Schedule A special hiring authorities have been revised to give disabled employees more security, although some liabilities still exist.

*State:* For State government, there is no uniformity. Some States self-impose nondiscrimination and have an affirmative action program for hiring within their own agencies. But many do not. There are some notable models that could be followed; one of them is California, which was the first jurisdiction to require State departments and agencies to meet goals and timetables for hiring disabled people.

The California State Personnel Board faced a major problem in implementing a goals and timetables requirement for disabled people. If it applied the goals for all disabled people, the agencies could circumvent the intent by hiring people with minor disabilities that would not require job accommodations or other modifications and yet still claim to be in compliance. If it required strict numbers for each type of disability, it would be imposing a statistical and personnel management nightmare. However, it was able to make the distinction between the broader class of disabled people who require protection from discrimination and the narrower class of people with more severe disabilities whom the State government felt should be actively recruited and hired.

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[3] Ryan v. FDIC, 525 F.2d 762 (D.C. Cir. 1977).

The California goals and timetables apply only to certain identifiable groups: people with hearing and visual impairments, people with orthopedic or mobility impairments, and people with mental disabilities.

The California program has other very attractive attributes. It was developed and is implemented by a very competent staff led by disabled individuals with good strong contacts with the disabled community. State agencies are scrupulously reviewed for compliance, and the program has been very successful. During 1979 the State hired 600 disabled people in the targeted groups. Several agencies have met or exceeded their goals. By sorry contrast, the Federal Government has consistently managed to experience a decline in the overall percentage of disabled employees every year since 1973 when section 501 was enacted.

California has also implemented a plan allowing agencies to hire readers for blind workers, interpreters for hearing-impaired workers, and attendants for workers with substantial mobility limitations. The creation of positions expressly to provide these accommodations eliminates the problems of adding such duties to those of already busy staff.

## Recommendations

*Federal:* One of the major problems facing the disability affirmative action program is lack of enforcement and program staff. Within the agencies, there is very little visibility or high-level attention to the program. Many agencies have delegated the duty of preparing and sending off affirmative action plans to the EEOC to a fairly low-level personnel staff member, and that is virtually the entire resource put into it. Clearly, affirmative action in hiring disabled people should be more than filing papers, putting up a poster or two during "National Employ the Handicapped Week" (should affirmative action be reduced during the rest of the year?), and printing pictures of disabled employees in the agency newsletter. Yet that is what some agencies are reporting as their major activities. Other agencies have to be prodded and cajoled year after year into filing their annual reports.

The affirmative action program for disabled people should not be enforced in an agency's personnel office but in the EEO offices along with programs for minorities and women. Disabled individuals should be actively recruited for such positions at policymaking levels within each agency.

The disabled community is worried that the goals and timetables required by the EEOC will become a failure, because the Federal agencies will not undertake a serious outreach program. Disabled groups and individuals have come to realize that a Federal job announcement often arrives too late for a job that has already been filled in the minds of the hiring supervisors, if not in fact. Other disabled people have filed their resumes with the selective placement coordinators in the agency personnel offices only to find later that their resume has never been taken out of its file cabinet. The Federal regional offices have very few staff working on disability affirmative action, yet that's where the majority of disabled people can be found.

Many agencies have yet to establish working advisory groups of disabled employees, as previously required, to provide their expertise on such issues as outreach and recruiting, removing barriers, making accommodations, and much more. Disabled people are one of the most knowledgeable resources available, yet many agencies overlook them.

The recently announced authority granted to the Justice Department to serve as lead agency in implementing section 504 will also have an impact on Federal employment of disabled people. The 1978 amendments to the Rehabilitation Act included an amendment to section 504 applying its provisions to the Federal Government's programs and activities. Clearly, the proper interpretation of this statute is to apply section 504's requirements to the Federal Government's employment practices. This will require a revision of the Federal practices with respect to medical examinations and preemployment inquiries, removal of barriers, and other major areas.

The Justice Department is an excellent choice to serve as lead agency with respect to section 504. The Civil Rights Division has a history of taking a strong civil rights stance on issues involving disadvantaged and minority groups, and it is reasonable to expect them to take a tough stand on section 504. They should begin their work on interpreting and enforcing the 1978 amendment immediately, since much time has elapsed during which the new application of 504 has had no effect.

Finally, while the Federal sector is under discussion, I feel that it is necessary to have a short discussion of the role of the President's Committee on Employment of the Handicapped (PCEH). While PCEH has been able to accomplish many noteworthy goals under a restrictive philosophy that favors public relations activities over advocacy, several leaders of the disabled community are now questioning the legitimacy and effectiveness of this approach.

In addition, there have been recent instances where PCEH staff members have taken public positions or undertaken activities that could substantially weaken the employment rights of disabled people. These include the position that section 504 should not protect disabled people from employment discrimination, that the Department of Labor's section 504 regulations should not follow the HEW guidelines issued under Executive Order 11914, and that the Department of Labor's section 503 regulations should not be strengthened to improve the protection to disabled individuals as formally requested in a petition of numerous disability groups.

There is also concern that PCEH is not complying with section 501(f) requirements that preference in hiring be given to disabled individuals. Perhaps more active recruitment of recognized leaders from the disability civil rights movement for leadership positions within PCEH would prevent future problems.

*Local Government Employment:* While not much research has been conducted on the employment practices of local governments with respect to disability discrimination, this is a crucial sector of public employment. A broad variety of job opportunities is affected in every community in the country.

The most frequent concern expressed by lawyers who handle disability employment discrimination cases and advocates is that local governments are in violation of numerous Federal and State statutes in their use of exclusionary medical standards which are often blanket requirements for any job. Many requirements are not related to specific job performance. Many cities and counties require applicants to be virtually free of any type of disability or the appearance of one just to apply. Automatic medical screening is an indication that other discriminatory practices are probably also occurring routinely, in that such practices are a carryover from accepted practice in the past almost everywhere. If enforcement by Federal and State agencies is failing to deal with the most blatant discriminatory practices, then we have reason to question the Federal and State enforcement effort in general, at least with respect to local governments.

This is an area where research could bear much fruit producing more job opportunities for disabled people. These job opportunities are especially valuable, since they don't require relocation, in most instances, and allow disabled people to serve their community in many different ways.

As a matter of policy, I would urge the Commission to consider putting resources into the area of public sector employment. Information and statistics are readily available, and a relatively small amount of work can affect a large segment of the disabled population. There are positive accomplishments at many levels of government to learn from, as well as an immense need for improvement. Enlightened employment practices that emphasize flexibility and accommodation to the employee's needs benefit all employees, not only those with disabilities. As we become more independent and as education begins to serve disabled children and young adults, the need to identify and eradicate employment discrimination grows greater every day.

## STATEMENT OF DEBORAH KAPLAN, ATTORNEY/ CONSULTANT, OAKLAND, CALIFORNIA

Ms. KAPLAN. While the major subject I have chosen to talk about today is Federal employment and talking a little bit about the public sector in more expanded terms, I would like first to express how deeply and genuinely the disabled community appreciates the fact that the Commission is now moving into the area of handicapped discrimination.

It is extremely important that there be a national recognition of the fact that our focus has been for many years on civil rights. It is extremely difficult to move people's attitudes from one of talking about charity and thinking of giving disabled people what is right or what they need to one of helping disabled people get their rights and supporting disabled people in their struggles to achieve civil rights and the ability to govern their own lives. The period ahead of us is going to be a time for working together much more closely with the other groups with which the Commission is concerned and has been concerned for many years.

Your added capacity to handle disability-related issues will bring us a lot more closely into what I think of as the civil rights family. We need to begin developing much closer ties with leaders and people who are very active in civil rights because we stand to gain more together, especially in the time ahead of us, than we ever could separately. I think we are all becoming very acutely aware of what we stand to lose if we cannot work together.

The disabled community has many strengths that we can bring to the civil rights movement. Many of our supporters and allies are from outside the civil rights arena. We are as diverse a group as the entire population and our families and friends, who gradually are becoming more and more supportive of the idea that civil rights is what we are talking about, are found all over the country in every sector.

It is incumbent upon us to be strong advocates of the proposition that the denial of civil rights to any group hurts us as well, and it will also be our job in the future to remind the leaders of other civil rights groups that a substantial number of their own people are also members of our constituency, as Dr. Bowe very eloquently discussed. I believe the civil rights community is enriched by our presence, since all our efforts will enhance hopefully the efforts of all our groups.

The public sector has a major role to play in increasing the opportunities available to disabled people in employment. Many changes are needed and true equality for disabled people certainly has a way to go before it becomes real. But it is also true that the public sector has been more available to disabled people in terms of employment than the private sector.

A close examination of this issue, though, reveals that we are still talking about relative comparisons. The picture for many disabled people is one where discrimination, either intentional or nonintentional, is what they find when they go out to find a job or try to advance in their employment.

All levels of government have an obligation to serve as models in eradicating discriminatory practices in employment. There are countless statutes, as Dr. Bowe mentioned. There are reports by all levels of government. I think the public very rarely makes the distinction between the human rights commission and the public works commission or any other level of government. Government is government. If government is seen not obeying the laws that apply to itself, not employing disabled people equitably, then it becomes a matter of ridicule. Disabled people become aware that jobs are not available in the public sector or that discrimination is occurring, and the result is that they develop distrust in the enforcing agencies and, even when discrimination is occurring, feel that it is pointless to file complaints. I have heard that from many people.

Private sector businesses and institutions that are supposed to comply with the law must realize that it is not going to be strictly enforced against them, or else they simply lose respect for the system entirely. All of this drastically undermines civil rights of disabled people.

Public sector employment offers a wide variety of employment opportunities for disabled people. This means that people with many different types of disabilities and training have a greater chance of finding the jobs for which they are most qualified in the public sector. Because many public sector agencies employ relatively large numbers of people, there are more job opportunities and more opportunities for making job restructuring changes or other types of accommodations without imposing undue hardship on the government structure itself. All of this enhances the attractiveness of public sector employment for disabled people.

There are many public policy reasons for employing disabled people in government jobs, as well. Disabled people must be perceived by the public as an integral part of government on a highly functional level.

By employing disabled people in a broad variety of positions, many with direct public contact, a government agency is making a statement that disabled people are competent and that it trusts them to do the job.

Public relations campaigns, posters, "Hire the Handicap" weeks are really poor substitutes for the real thing, which is hiring disabled people and putting them to work where they can do the job.

For the same reasons, it is imperative that disabled people be actively recruited for leadership positions within government agencies. Disabled persons must be involved in setting priorities, developing policies, and actively providing leadership to public programs. As Dr. Bowe stated before me, it is an embarassment when we hear Secretary-level cabinet members talking about the problems in hiring other minorities and women and simply ignoring the fact that employment of disabled people is an even greater problem. It gets the message across rather well that hiring disabled people at the Federal level is not a priority.

The record of the public sector on the Federal level really began in 1948 when the Federal Government prohibited discrimination against disabled people. The wording of that statute is indicative of the negative stereotypes about disabled people of that time with its express requirement that the disabled person not present a hazard to himself or others on the job. There is nothing wrong with that. There is something wrong with coming out and expressing it within the statute itself. I feel that that exposes an underlying assumption that disabled workers are more prone to injuries on the job; either that or they are more likely to use poor judgment in choosing employment. That is offensive and it is really not supported by the facts.

During the period between 1948 and 1973 the Federal Government initiated the selective placement program in the Civil Service Commission to expand employment opportunities for disabled people. Major underlying concepts of this program were that disabled people needed to be carefully screened into appropriate positions, there being many positions from which it was felt people with disabilities could be categorically excluded and that disabled people needed to prove to the government and their supervisors that they were qualified and competent by performing successfully on their jobs for lengthy periods of time with virtually no job security.

During this time special appointing authorities were initiated for agencies to hire disabled people without going through competitive steps. This was called the schedule A appointing authority, and it was used to circumvent a lot of bureaucracy and get disabled people into the system quickly. In that respect it certainly works. It has brought many disabled people into the system. Unfortunately, employees hired this way were not protected against adverse actions and had no access to grievance procedures to seek redress from unfair treatment. Thus, an agency could take the risk of hiring a disabled employee and if dissatisfied, for whatever reason, could end the experiment rather abruptly.

All of this is not meant to imply that the selective placement program was not a marked improvement over past practices or the private sector. Many disabled people were brought into the Federal Government during this period. I cite the example of a disabled young man who graduated from a prestigious eastern law school in 1964 with many, many distinctions and at the top of his class. He applied to 39 different law firms, interviewed with them all—his disability is apparent—and did not even receive a rejection letter from one. In the next year he applied for a position at two Federal agencies and was accepted. In that instance, his high qualifications were recognized and the system allowed that.

The selective placement program's shortcomings were consistent with prevalent social attitudes of the times. Disabled people tended to be seen as dependent and relatively worthless to society. Charity, rather than rights, was dispensed and could be terminated if not gratefully accepted. These attitudes and practices also existed within the Federal Government to a certain extent, although a primary objective of the selective placement program was to change these attitudes through a kind of gentle persistence.

The problem we face today is that the Federal Government's affirmative action program for disabled people is built upon an outdated foundation. Because the system tended to beg for favors rather than demand rights, which certainly was not what was done at that time, it has been difficult to change from selective placement to affirmative action, which is accompanied by job accommodations, removal of barriers, ending the practice of job stereotyping (placing a person with a certain disability in a certain kind of job no matter what his or her qualifications), and true upward mobility.

In 1973 Congress enacted section 501 of the Rehabilitation Act, which requires affirmative action plans to be filed with the Civil Service Commission and also establishes an interagency committee to supervise this whole program and to remove barriers within the Federal system.

In 1977, because of a lawsuit filed by a disabled woman, the Federal Government finally initiated a complaint procedure, because up until then a disabled person had no redress against the Federal system for discrimination based on disability even though that was illegal. A significant factor in the development of these procedures was the extent to which disabled organizations were directly involved.

Although the proposed regulations were not adequate, did not get into many specifics about what was prohibited, the disability community formed a coalition around this particular issue and was instrumental in making recommendations which were adopted. Since then people with disabilities have been involved in providing more guidance and positive criticism, and the lines of communication are fairly open.

The disabled community was instrumental in seeing that the section 501 affirmative action program was transferred to the Equal Employment Opportunity Commission together with other Federal nondiscrimination programs, rather than remaining with the Civil Service Commission, which was what was originally proposed.

Because of the surveillance and constant input from the disabled community, the system is more sensitive and responsive than ever before. We have held numerous meetings with Chair Norton, other members of her staff, and, as a result of a petition filed by the Coalition of Disabled Groups, goals and timetables are now required by Federal agencies in hiring disabled people, a very significant and positive step. The Office of Personnel Management has revised its medical standards, which will make it easier for disabled people to get into the system, and the schedule A special appointing authority has been revised to take away some of the inadequacies, although some still exist that are inherent with schedule A.

For State government there really is no uniformity. Some States do self-impose nondiscrimination and affirmative action; others do not. There are notable models, one of which I point out as California. The California State Personnel Board decided to make a go with goals and timetables and was the first jurisdiction to do so. In deciding how to implement that objective, they faced a dilemma. If they applied goals and timetables to the entire class of disabled people that are protected by nondiscrimination statutes, an agency could hire the least disabled people and comply with the guidelines. If they tried to say you must hire a certain percentage of each kind of disability, an administrative nightmare would be created.

Instead, the California State Personnel Board was able to make the distinction between groups which ought to be protected against discrimination and groups for which positive outreach and outreach programs to hire more people ought to be initiated. Therefore, certain targeted groups are the objective of the goals and timetables requirements, and the program has been very, very successful. California in the last year has been able to bring 600 members of those targeted groups into the State service, and there is an organization of disabled people in State service which is very active in bringing about reform and keeping the dialogue going with the State government.

In addition, California has implemented a plan allowing agencies to hire readers for blind workers, interpreters for hearing-impaired workers, and attendants for workers with substantial mobility limitations, which allows everybody else in the agency to do their job without getting other duties added to what they are already expected to do.

One of the major problems facing the disability affirmative action program in the Federal Government is lack of enforcement and program staff. Within the agencies there still is very little visibility or high-level attention to the program. More staff needs to be brought in at high levels, not in the personnel office, which has been the practice before, but in the EEO offices where other nondiscrimination programs are enforced.

The disabled commnity is also concerned that the goals and timetables required by the EEOC will be a failure if more positive outreach is not made, and we are trying to work with the Commission to make sure that that happens. Unfortunately, that is a very hard thing to supervise.

We also feel very positively that advisory groups within all the agencies need to be used on a much broader level to be able to take advantage of the disabled workers within the agencies and give guidance on how to make affirmative action a success.

Dr. Bowe already talked about the 1978 amendments, and so did Mr. Hoehne, to 504, which apply to the Federal Government. Hopefully, that will have a substantial impact on employment practices within the Federal Government.

Finally, while the Federal sector is under discussion, I feel it necessary to have a short discussion on the role of the President's Committee on Employment of the Handicapped. While PCEH has been able to accomplish many noteworthy goals under a restrictive philosophy which favors public relations activities over advocacy, several leaders of the disabled community are now questioning the legitimacy and effectiveness of this approach.

In addition, there have been recent positions taken by PCEH staff we feel could substantially weaken the employment rights of disabled people. These include the position that section 504 should not protect disabled people from employment discrimination, that the Department of Labor's section 504 regulations should not follow the HEW guidelines under Executive Order 11914, and that the Department of Labor's section 503 regulations should not be strengthened as requested in a petition from disability groups. We are also concerned that there needs to be more effective leadership within the Committee by disabled advocates themselves, who have worked in the area of civil rights over the past few years.

With respect to local government employment, the major concern I have heard expressed by private attorneys and advocates working in this field is that many cities and counties tend to use medical standards to categorically exclude disabled people from even applying for jobs. This, to me, indicates a lack of enforcement at the Federal and State levels, and it also indicates that there are probably many other barriers to disabled people other than just being able to be considered for employment. I think that is an area where research could bear much fruit to provide job opportunities for disabled people, since jobs at the local level are available without requiring a person to relocate, and, again, there are many different kinds of jobs that are available.

As a matter of policy, I would urge the Commission to consider putting resources into the area of public sector employment. Information and statistics are readily available, since they are public. A relatively small amount of work can affect a large segment of the disabled population. There are positive accomplishments that can be highlighted, as well as negative remarks that could lead to change.

Enlightened employment practices that emphasize flexibility and accommodation to the employees' needs benefit all employees, not just people with disabilities. As we become more and more independent and as education begins to serve disabled children and young adults, the need to identify and eradicate employment discrimination grows greater every day.

Thank you very much.

[Applause.]

**VICE CHAIRMAN HORN.** Thank you very much.

Commissioner Ruiz?

**COMMISSIONER RUIZ.** Mr. Hoehne, I notice that you are a lawyer in private practice with 22 years of experience in human services, and that Deborah Kaplan, likewise, is a lawyer who has provided legal research and technical assistance with relation to disabled persons. So I am going to ask you both as lawyers this question, and the question is predicated on the following:

Custody of minor children between contending parents is a national emotional issue. The case of *Kramer v. Kramer* last year won an Academy Award in the motion picture industry because of the fact that it does happen to be a national issue.

Attorneys representing parents of small children oftentimes accuse either parent of not having qualifications for custody of minor children on the alleged ground that the other parent is emotionally handicapped or physically handicapped.

Some of our State court judges stereotype so-called disabled persons.

Now, we are discussing the rights, civil rights, of disabled persons who may be emotionally or physically handicapped. We are now defining these rights as civil rights.

Does either counsel have a case or is either counsel acquainted with any case now pending or on the way to the Supreme Court or which has been decided by a State court wherein an emotionally disturbed parent who may nevertheless be stable by the use of prescribed medicine is claiming that his or her civil rights have been violated by the State court for having deprived that person, in a custody battle for minor children, on the grounds of emotional or physical impairment, of legal custody?

MS. KAPLAN. I am aware of a very beautifully brought case in California, the *Carney* case, I believe, which was brought by colleagues of mine in California at the Western Law Center for the Handicapped, involving a disabled father who had had de facto custody of his children when his wife left him. He was a quadriplegic.

The wife brought a custody suit attacking his ability to take care of his children because of his disability. The trial court agreed with the mother to the extent that the court even stated that he couldn't be a good father if he couldn't play softball with his sons.

That case was appealed eventually to the California Supreme Court. We got a ruling that was, I think, the exact opposite in many ways of the decision that the Supreme Court decided last summer, where the California Supreme Court in a unanimous vote ruled that the father had the right not to have his disability used against him and that disability could not be used as a presumption of unsuitableness to be a parent. The opinion is really a joy to read. The attorneys who brought the case and who all contributed to it did a very excellent job in presenting the facts of the case and overriding many of the negative stereotypes about disabled people which everybody, including judges, often has.

COMMISSIONER RUIZ. With relation to that case, having read it, do you recall any civil rights implications or were there any Federal points of law raised in that case? It is an excellent case that you have just mentioned.

MS. KAPLAN. I am not sure. I haven't read the opinion from page to page, I have to confess.

COMMISSIONER RUIZ. I would like to——

MS. KAPLAN. I would be happy to provide you with the citation.

COMMISSIONER RUIZ. —have that case made a part of the record at this juncture.

VICE CHAIRMAN HORN. Without objection, the case or a summary of the case will be made a part of the record at this point.

COMMISSIONER RUIZ. What is the title of the case?

**Ms. Kaplan.** I believe it is *Carney v. Carney.*

[See Exhibit No. 1.]

**Commissioner Ruiz.** Have you had any similar experiences?

**Mr. Hoehne.** If there are any cases of that type beyond the district court level in my part of the country, I am not aware of them, Commissioner.

**Commissioner Ruiz.** Thank you very much.

**Vice Chairman Horn.** Thank you. Commissioner Saltzman?

**Commissioner Saltzman.** Ms. Kaplan, I was wondering whether you might indicate for us, aside from the two points you have already made with respect to EEOC, your recommendations. The two points I believe you made were the employment of the handicapped by the agency and a more effective outreach program. Are those the two specific——

**Ms. Kaplan.** There are some more in my text. A major——

**Commissioner Saltzman.** Oh, they are in your text?

**Ms. Kaplan.** One is getting people at the Federal level in the regions. So far most of the personnel working on affirmative action have been centered here in Washington, while I would guess the majority of disabled people who are looking for jobs are not all here in Washington. The outreach programs really need to be occurring at that level.

There are others in my text.

**Commissioner Saltzman.** Okay. If they are in the text.

One other: You are pleased in your text, I notice, with the Justice Department as the lead Federal agency in this matter. Do you have specific recommendations relative to their role?

**Ms. Kaplan.** I am very pleased with Justice Department's role so far with respect to disability, not placing it in one little part of special litigation of the Civil Rights Division, but of requiring that all the divisions get involved in disability cases.

We also have an agreement from the Civil Rights Division staff at Justice to develop much closer and ongoing relationships with the disabled community to advise them what they should be doing in general.

With respect to Executive Order 11914, Lead Authority Duties, the first job is going to be defining just what that means; the amendments in 504 which require the Federal Government's programs and activities to be in compliance with 504.

There is a controversy within some of the agencies about what that means, the more restrictive view being that that just means programs that are directly funded or that come out of agencies, but not their own internal affairs. I believe the intent of the statute is indeed to bring all the agencies' programs and activities, as the statute states, into compliance with 504. That would include employment, that would include all internal programs, meetings, and the like, and then to develop regulations specifically setting out just what that means.

The other major role is going to be getting on the case of all the agencies that have not yet issued 504 regulations, which is really a shame.

**VICE CHAIRMAN HORN.** Chairman Flemming?

**CHAIRMAN FLEMMING.** Going back to the White House Conference for a moment, two points. As you look at the deliberations of the White House Conference, the results that have taken place since then, would you say that the investment of time, energy, and resources was worthwhile and that you would recommend at some point down the road there be a second White House Conference in the area of handicaps?

The second question is of the civil rights section. You have already identified one outcome from the recommendations under the civil rights section, namely, the passage of legislation. What is the next most important recommendation in that civil rights section on which everyone should focus in an effort to move forward?

**MR. HOEHNE.** I suppose there are really two ways of looking at the ultimate effectiveness of and the real payoff on the investment made in the White House Conference, Mr. Chairman. I frankly am concerned that there may eventually be the same type of unfortunate outcome we had with some of the Great Society programs where hopes and aspirations were aroused and then dashed, a lot of broad and far-reaching promises were made directly or by implication, but never kept. From that perspective, I am deeply concerned that perhaps, in this context, the White House Conference may have done more harm than good because, after all, a lot of people did have their hopes stimulated, but the substantive action and the new service resources required to bring those aspirations to fruition have not materialized.

Nevertheless, because there do continue to be such critically unmet needs throughout the disability community, because there is an implementation plan that has not been carried out, because many things have changed in so many ways since 1977 in terms of our economy and of our priorities nationally, I certainly do feel that it would be appropriate at a future time to consider following up with another White House Conference.

If I understand your question about the civil rights component of the White House Conference, you asked what is the single, second-most important——

**CHAIRMAN FLEMMING.** Yes. You mentioned the fact that there were about 50 recommendations, as I recall it, under that particular heading and you have identified one positive result flowing from those

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recommendations. But we at the Commission look at those other 49 recommendations. Is there one standing out in your mind that has not been implemented, but which in your judgment is entitled to a very high priority as far as our consideration is concerned?

MR. HOEHNE. In terms of the fundamental issues which the Commission is considering and also in terms of the fundamental responsibilities of individuals with disabilities themselves, I would say, particularly at this immediate juncture of the year, an election year, the second most important item relates to voting. Disabled people need to be made more aware of their right to vote, how to register, and how, if they can't get to the polls, to at least use the absentee ballots. The Commission should strongly affirm this because this in the end is the most basic right any of us have. And ultimately, the ballot may represent the best tool disabled persons have for achieving equity and equality in our society.

CHAIRMAN FLEMMING. Thank you very much.

Going to your concerns, I found your analysis of the current situation to be very helpful and I think you would probably—I gather that you would recommend to us that we give a very high priority to trying to put pressure on for the issuance of regulations under 504. Aside from that, what do you think is the next very important step that can be taken in this area of equal employment, looking at it from the standpoint of either Federal employment or State and local government employment?

MS. KAPLAN. I really would like to see some effort spent on local government employment and a serious look at what the States are doing. I know various representatives of the States, at either the government or the enforcement level, will be here.

The Federal Government is important as a model, but most of the jobs are found elsewhere. I think it is easier to reform practices of bureaucracies, even though it certainly takes a long time, than it is to deal with the private sector, and it possibly bears more fruit.

There are very, very extreme problems with local municipalities, and it would be very fruitful to document just exactly what those problems are and to set out ways that they can be adjusted or changed.

CHAIRMAN FLEMMING. Do you think the Federal Government should get into it legally from the standpoint of——

MS. KAPLAN. It is already in it.

CHAIRMAN FLEMMING. —Federal funds that go to local government or to State government?

MS. KAPLAN. I don't understand what you mean.

CHAIRMAN FLEMMING. Well, I mean do you think that one of the conditions for the receipt of Federal funds should be including in affirmative action programs the handicapped?

**Ms. Kaplan.** Well, to a certain extent that is already there.

**Chairman Flemming.** Yes.

**Ms. Kaplan.** 504 funds are given by the Civil Service Commission——

**Chairman Flemming.** That's right.

**Ms. Kaplan.** —and many other agencies directly to State and local governments. It would be nice if those were enforced.

**Chairman Flemming.** If those were enforced, then would you run it right across the board as far as whenever Federal funds are utilized by State and local governments? Would you imply that?

**Ms. Kaplan.** Sure.

**Chairman Flemming.** Okay.

**Ms. Kaplan.** I would like to say one thing about the subject we just talked about, which is voting accessibility.

A lot of people assume—I think it is assumed in Congress—that making voting booths accessible is a very costly request. I don't tend to view it that way. There are many, many public facilities in every community which are accessible already and which are being required to be made accessible. Simply changing a polling place from one inaccessible location to one nearby which is accessible would take care of a vast amount of the problem. It is simply somebody going out, hopefully somebody who knows accessibility well and can identify accessible buildings, and making the recommendation that a site be changed. It is not all that difficult.

**Vice Chairman Horn.** Commissioner-Designate Ramirez?

**Commissioner-Designate Ramirez.** I am wondering if you could help us in making sure that we have a listing of all the agencies that have not promulgated 504 regulations. I think it would be very easy for us then to bring this to the attention of the Justice Department and use our——

**Ms. Kaplan.** Dr. Bowe's organization, the American Coalition of Citizens With Disabilities, has been working on that and has an up-to-date list. I would recommend that you go to him, as we do.

**Vice Chairman Horn.** Yes. If I might suggest, we will do that, but also the Staff Director will write to elicit from all Federal agencies what the status is——

**Ms. Kaplan.** I think that will have an impact.

**Vice Chairman Horn.** —in terms of time as to the issuance of these regulations: when they got started on it, how many people are devoted to this task, when they expect to issue them. I think we ought to do this as a monitoring effort. And without objection, that will go at this point in the record.

[See Exhibit No. 2.]

**Commissioner-Designate Ramirez.** From my own experience in Federal Government, I have to admit to a great deal of insensitivity myself, but I am interested in whether you have any statistics or any sense of where disabled people are in the grade structure in Federal employment. I could go into almost any agency that I was associated with in HEW and I always found at least one superbright, superqualified disabled person, but I didn't have the sense that disabled people who maybe weren't as superbright and supereducated were getting jobs in some of the lower grades. Is that perception an accurate one?

**Ms. Kaplan.** I am not sure what the latest statistics show. Clay Boyd, who is going to be on a panel later, has all of that, I would expect, since that is one of his jobs over at EEOC at the Interagency Committee. They have very detailed recordkeeping of exactly that kind of information, which is going to be extremely useful for all of us.

**Commissioner-Designate Ramirez.** And I am wondering—as an Hispanic woman going into the Federal Government and being fairly uninitiated several years ago, I was very impressed with the tremendous amount of Federal money that is spent on training people to go into the different professions. I think 7,000 people are trained in the rehabilitative services field alone, 7,000 per year. We train something like 3,000 social workers per year to work in child welfare services. The Federal Government spends a lot of money in those areas.

I think it is a corollary kind of issue to Federal employment. Are you looking at how many disabled people are being trained in all those professional development programs supported by the Federal Government? Is anybody?

**Ms. Kaplan.** Not to my knowledge. There again, you might ask Clay Boyd what kind of data they have on that.

That certainly would be an area which bears much fruit. I know we are constantly concerned that when the government engages in training, it is conducted in a way that disabled people can participate and will be accommodated. To a certain extent that is happening, but I myself wonder how far it is filtering down.

**Vice Chairman Horn.** Commissioner-Designate Ruckelshaus?

**Commissioner-Designate Ruckelshaus.** I want to thank you both for your papers. They will certainly be thoughtfully read.

I have a question for Ms. Kaplan. I assume that you would agree with Dr. Bowe that some kind of additional commitment from the executive offices are needed so that statements from heads of departments outlining the strides they have made in affirmative action will include mention of hiring of the disabled.

**Ms. Kaplan.** I think all too often, though, I have experienced or have noticed that statements are made from time to time, and what is also important is followup. One of the recommendations I have made in the text is that there be somebody at the administrative level in all the agencies who is looking out for what is happening with affirmative action for disabled people.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, I wanted to ask you a question about that. You cite a rather distressing fact that the Federal Government's percentage of employed disabled has actually declined.

MS. KAPLAN. Up until the year 1978, which is the latest year with full statistics.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, what about this Interagency Committee for Employment of Handicapped. Is that moribund or is it just powerless?

MS. KAPLAN. Well, do I only have those two choices?

[Laughter.]

COMMISSIONER-DESIGNATE RUCKELSHAUS. None of the above?

VICE CHAIRMAN HORN. Or all of the above?

MS. KAPLAN. It is very interesting. We have been dealing with the Interagency Committee and have long been advoacting that somehow there ought to be a mechanism for getting disabled groups involved and, to a certain extent, they have been responsive. Unfortunately, one of the major problems with enforcement of section 501 in general is that the government did not have very strong sanctions to use against an agency which doesn't carry out the guidelines, the rules, the requirements that came from Civil Service until recently, and now it is the EEOC. I think it is widely known in many of the agencies that it is real nice if you comply, but nobody is going to do anything too bad to you if you don't.

The Interagency Committee has made many positive recommendations which have been implemented in how this system is carried out and it is becoming more responsive. For that, I think we are all very pleased.

The question is really one of sanctions. I know California is finding some interesting sanctions. One that was suggested to me recently by a colleague is that an agency simply not be able to hire, that an automatic freeze be put on as an ultimate sanction if affirmative action in disability is utterly disregarded, as happens with some agencies. There are many ways to push the agencies' buttons other than just to send out notices that they haven't filed reports.

Another positive inducement, which was also suggested by a colleague, would require congressional authority, but some way of giving budget bonuses to agencies that actually do comply with goals and timetables and do hire people. I think that can be justified by the fact that the more disabled people find employment, the less we are spending on social security and other benefit programs, so that the money that is spent or given to agencies for coming up to the guidelines and goals and timetables would actually be spent reducing other pots of money that are being depleted fairly rapidly.

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** Thank you.

**VICE CHAIRMAN HORN.** Commissioner-Designate Berry?

**COMMISSIONER-DESIGNATE BERRY.** Thank you very much.

Even though I did not hear your testimony, I read both of your papers very carefully. I only have one question and that is for Ms. Kaplan. It is not altogether clear to me from reading your paper whether you think a selective placement program increases or reduces discrimination, and whether you are for it or against it.

**MS. KAPLAN.** That is a real good question. I think it has decreased it, simply because up until there was a selective placement program I would certainly guess that anything that happened to eliminate discriminatory practices was totally voluntary. I think a certain amount of good has certainly been done. It is kind of like the Jerry Lewis telethons where a lot of good is done, but at the expense of encouraging certain kinds of attitudes.

I think the selective placement program has certainly been changing and the attitudes of the people at the top level have been changing and becoming much more responsive.

I think it needs to be made clear by taking the system out of personnel and putting it in EEO that we are now talking about civil rights and somehow many of the bad attitudes and bad approaches to hiring disabled people need to be gradually decreased and done away with.

**COMMISSIONER-DESIGNATE BERRY.** But you think a selective placement program should be kept as a strategy?

**MS. KAPLAN.** It is one effective component of a much, much broader program that includes an emphasis on equal rights.

**COMMISSIONER-DESIGNATE BERRY.** Thank you.

**VICE CHAIRMAN HORN.** I would like to pick up on that last point you made. Do you really want the selective placement program removed from personnel and put in EEO offices? Shouldn't the people that do most of the hiring be charged with the responsibility, then monitored and evaluated, be they personnel officers or program managers?

**MS. KAPLAN.** I guess what I mean to say—and I struggled with that concept myself—is that the major enforcement of affirmative action, which up until now has solely been selective placement coordinators in the agencies, that focus on affirmative action, I think, needs to be in the EEO department. There should be somebody within the personnel office, and I don't care what you call them—I am not tickled with the phrase selective placement—there needs to be somebody in personnel who is receptive and responsive. Unfortunately, up till now that person in personnel, from studies done by the Disability Rights Center when I was there, indicate that many of those people are at such a low grade level that they are in no position to really accomplish anything except file plans.

VICE CHAIRMAN HORN. Staff Director Nunez?

MR. NUNEZ. No questions.

VICE CHAIRMAN HORN. I would like to thank each of you very much for testifying today. We appreciate having your statements and your explanatory remarks.

[Applause.]

## Employment and the Handicapped

VICE CHAIRMAN HORN. The next panel is on employment and the handicapped. If Assistant Attorney General Days and Mr. Liebers will come forward, we will begin.

Our first speaker on employment and the handicapped will be a long-time friend of this Commission and frequent witness, a person who has been active throughout his professional career in the field of civil rights. Assistant Attorney General for Civil Rights Drew S. Days III was appointed to that position in March 1977. He chairs the Interagency Coordinating Council which oversees affirmative action and enforcement work of the different Federal agencies with respect to the handicapped.

Before coming to Washington, he served for a number of years as first assistant counsel to the NAACP Legal Defense and Educational Fund in New York. He also taught at Temple University in Philadelphia.

We are glad to have you with us.

# EQUAL EMPLOYMENT OPPORTUNITY FOR THE HANDICAPPED

By Drew S. Days III*

Congress in its declaration of purpose in passing the Rehabilitation Act of 1973 stated one of the act's goals was: "to promote and expand employment opportunities in the public and private sector for handicapped individuals and to place such individuals in employment."

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* Drew S. Days III is Assistant Attorney General for Civil Rights.

The need for such legislation was and is clear. According to the 1970 census, over 20 million people in the country—1 out of every 11 people—are handicapped. This figure is in all probability an underestimation of the numbers of handicapped individuals as that term is defined in the Rehabilitation Act of 1973. The cost of employment discrimination against the handicapped in terms of wages lost is substantial, as is the amount of Federal and State monies expended to support our disabled population. To that end, it is estimated that in 1980 the Federal Government will spend $40 billion or 1 out of 13 dollars in the Federal budget. An estimated additional $60 billion from the States and other sources will be expended. The cost to society as well as the cost to handicapped individuals in their loss of self-esteem and self-reliance is, of course, immeasurable. Before this agency, at least, the need that gave rise to the legislation is evident.

I would like to discuss today progress toward achievement of the goal of equal employment in the 6 years since the passage of the Rehabilitation Act of 1973. However, before I do so, I will address some of my responsibilities with respect to the rights of handicapped individuals.

I have several responsibilities concerning enforcement of the rights of the handicapped. In my capacity of Assistant Attorney General of the Civil Rights Division, I am, of course, responsible for formulation and implementation of the government's litigation program to enforce the rights of the handicapped. In addition, the 1978 amendments to the Rehabilitation Act provided for an Interagency Coordinating Council to attempt to achieve consistency amongst the responsible Federal departments and agencies and to avoid overlap and duplication of effort. After months of delay in establishing the Council, the Office of Management and Budget asked the Department of Justice to chair the Council, and the result is that I have been acting as Chairman of the Council since August 1979. We have had seven meetings since that time, and I am pleased to report that the Council is now functioning and is beginning to discharge its responsibilities.

There are three separate provisions in the Rehabilitation Act that regulate employment of handicapped individuals: section 501 addresses the Federal Government's obligations; section 503, the obligations of Federal contractors and subcontractors; and section 504, the obligations of recipients of Federal financial assistance. Sections 501 and 503 refer specifically to employment and contemplate affirmative action in that regard. Section 504 prohibits discrimination in federally assisted programs against an otherwise qualified handicapped individual "solely by reason of his handicap." (Section. 504, 29 U.S.C. 794.) No specific reference is made to employment affirmative action or a need for reasonable accommodation.

Unlike Title VII of the Civil Rights Act of 1964, the Rehabilitation Act does not contain a general prohibition against employers, unions, and employment agencies engaging in employment discrimination against handicapped individuals. Only if an employer is a recipient of Federal financial assistance or a Federal contractor or subcontractor whose contract is in excess of $2,500 is it within the scope of the Rehabilitation Act's prohibitions. Thus the reach of the Rehabilitation Act of 1973 with respect to employment discrimination is obviously far less than that of Title VII. Nor is there any clearly conferred right of the Attorney General or other Federal agency to commence litigation to enforce the statute, nor indeed is there a private right of action expressly conferred under sections 503 and 504.

With one difference, "handicapped individual" is defined identically for the purposes of sections 501, 503, and 504. That is, for the purposes of Title V of the Rehabilitation Act, "handicapped individual" is defined as "any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such impairment, or (3) is regarded as having such impairment." The 1978 amendments excluded from coverage alcohol and drug abusers whose addiction precludes effective job performance, but did so only with respect to sections 503 and 504 as they relate to employment. No such provision was added to section 501.

As an employer the Federal Government has a strong obligation under the Rehabilitation Act to ensure that discrimination against handicapped individuals does not occur in its work force. Section 501 of the act requires that each department, agency, and instrumentality in the executive branch of the Federal Government engage in affirmative action in "the hiring, placement and advancement of handicapped individuals." Section 120(a) of the Comprehensive Rehabilitation Amendments of 1978 provides that the remedies, procedures, and rights available to Federal employees as set forth in Title VII of the 1964 Civil Rights Act are available to any applicant or employee aggrieved under section 501.

The act grants to Federal employees and applicants alleging handicapped discrimination both a substantive right and a remedy, the same remedy available to those who claim discrimination on the basis of race, color, religion, sex, or national origin under Title VII. Under the President's Reorganization Plan No. 1 of 1978, the Equal Employment Opportunity Commission has the authority to enforce the requirements of section 501 administratively.

The prohibitions and the enforcement mechanisms of sections 503 and 504 differ from those of section 501. Section 503's requirement that Federal contractors and subcontractors receiving contracts in excess of $2,500 engage in affirmative action to employ and advance qualified handicapped individuals is enforced by the Department of Labor. Labor's regulations implementing section 503 (41 C.F.R. §60–741.1 *et seq.)* provide for enforcement through an administrative complaint and investigation mechanism that allows a contractor or subcontractor a formal hearing before an administrative law judge when an apparent violation of the affirmative action clause, as substantiated in the investigation, is not resolved, or when contract termination or debarment is proposed. Complainants have no comparable right to a hearing. Section 504's broad prohibition of discrimination in federally assisted programs against otherwise qualified handicapped individuals "solely by reason of" handicap is supposed to be enforced by each department or agency of the Federal Government that administers the funds. Section 504 is to be enforced the same way as Title VI of the Civil Rights Act of 1964, that is, primarily through administrative investigation, attempted conciliation, and either a formal administrative hearing before an administrative law judge looking to fund termination, or a referral for litigation. Executive Order 11914 gave HEW the coordinating authority under section 504 and required that HEW establish the standards and procedures to be followed by other Federal agencies in carrying out their duties under that section. Each agency is required to establish its own 504 regulations.

As this Commission may recall, there was a long delay between the adoption of the statute in 1973 and President Ford's order published in April 1976. There was further delay in publication of HEW coordination regulations, which occurred in 1978. Justice published its proposed 504 regulations in the *Federal Register* on September 21, 1979.

The regulations of the Department of Labor under 503 and HEW under 504 define qualified handicapped individual as one who is capable of performance with reasonable accommodation. Both sets of regulations require accommodation unless the recipient or contractor can demonstrate that such accommodation would impose "undue hardship" on the operation of its program or the conduct of its business. Some of the factors to be considered in determining what constitutes reasonable accommodation, as detailed in HEW's regulations, are: the overall size of the recipient's program, the type of operation, and the cost and nature of accommodation.

Given the varying nature of individual handicaps, as well as the varying types of businesses and jobs affected, the definition of reasonable accommodation must be broad enough to encompass a variety of situations. Experience, however, has demonstrated that the cost of required accommodation is often small and that advancing technology now provides options not available in the past. For example, the development of "talking" computers has allowed blind and sight-impaired individuals to perform legal research on the Department of Justice's JURIS system without the need for a reader's assistance. That system was also fitted with a slight modification to allow its use by an individual whose hand mobility had been restricted by cerebral palsy. Sometimes accommodation will merely require the lowering or raising of a desk.

Section 502 is another provision of the Rehabilitation Act that while not directly regulating employment does impact upon accommodation. That section established the Architectural Transportation Barriers Compliance Board, which is composed of members from the general public, 5 of whom are handicapped individuals, and 10 heads of Federal departments or agencies. It is the Board's function to ensure compliance with the Architectural Barriers Act of 1968 and to:

> investigate and examine alternative approaches to the architectural, transportation, communication, and attitudinal barriers confronting handicapped individuals, particularly with respect to telecommunication devices, public buildings and monuments. . .public transportation. . .[and] determine what measures are being taken by Federal, State and local governments. . .to eliminate the barriers. . . .

The Architectural Barriers Act requires that federally owned, occupied, or financed buildings and facilities must be designed, constructed, and altered to make them accessible to physically handicapped individuals. The Board's orders are binding on Federal agencies, and its orders against non-Federal entities may require fund suspension or termination for any building in noncompliance. Under sections 502 and 504, progress will be made towards availing handicapped individuals access to buildings and transportation, access that has in the past been limited or unavailable.

In the enforcement of Title VII of the Civil Rights Act of 1964, the primary thrust of decisions in the first few years pertained to procedural problems. For several years after that in the second stage, the principal issues concerned liability—what conduct is a violation of the law? Only when we reached the third stage in the 1970s did the courts reach questions of relief, and only at that stage did we begin to obtain large scale enforcement.

Unfortunately, in the field of equal employment opportunity for the handicapped we are still primarily in the first or procedural phase of enforcement. The courts are now grappling with those procedural issues whose resolution will mean the difference between whether handicapped individuals will be able to assert their claims of employment discrimination in Federal court.

Courts are now facing the question whether Congress intended to create a private right of action under section 503. The Department of Labor, as the agency charged with enforcement of that section, has taken the position that such a right of action should be implied and that its existence would not interfere with the conciliation process conducted by Labor in the individual complaints it receives. Rather, Labor has stated that "the prospect of litigation would have a sobering effect on the parties concerned, and actually encourage informal conciliation." (Affidavit of Weldon J. Rougeau, *Rogers v. Frito-Lay,* 611 F.2d 1074, 1108–1109.) In spite of Labor's position, the Fifth Circuit recently held in *Rogers v. Frito-Lay, Inc.* (5th Cir., 1980) that Congress did not intend to create a private right of action under section 503. Section 503 is modeled upon Executive Order 11246, which prohibits employment discrimination on grounds of race, sex, religion, and national origin by Federal contractors and requires affirmative action by them. The courts had earlier ruled that there was no private right of action under Executive Order 11246. The Fifth Circuit's decision, while disappointing, is not surprising.

While the question can by no means be considered resolved, should subsequent decisions follow the Fifth Circuit's, handicapped individuals will be precluded from bringing actions in Federal court under section 503. The procedure remaining available to them will be the filing of administrative complaints with the Department of Labor, which admits that it is hampered in its enforcement efforts by insufficient resources to investigate and resolve a growing backlog of section 503 administrative complaints.

On the issue of private right of action, section 504 has fared better than section 503. Most courts are now in agreement that a private right of action exists under that section. The Supreme Court's decision in *Cannon v. University of Chicago* (441 U.S. 667 (1979)) should confirm that result. There is, however, a more fundamental problem with section 504 as it pertains to employment discrimination. In 1978 the Fourth Circuit in *Trageser v. Libbie Rehabilitation Center* (590 F.2d 87 (4th Cir. 1978)) held that section 504 generally did not prohibit employment discrimination. The court in its decision determined that section 505 of the act (29 U.S.C. 794a), one of the amendments of 1978 which provides that the "remedies, procedures and rights set forth in Title VI of the Civil Rights Act of 1964 shall be available to any person" aggrieved under section 504, restricted section 504's coverage on employment matters to the scope of coverage under Title VI. Title VI, which prohibits racial discrimination in programs receiving

Federal financial assistance, precludes employment discrimination only (1) "where a primary objective of the Federal financial assistance is to provide employment" or (2) where employment discrimination results in discrimination against the beneficiaries of the program. The court in *Trageser* did not take the legislative history of the 1973 act into account, nor did it consider the subsequent amendments reflecting continuing congressional concern for employment of the handicapped. The Justice Department supported the plaintiffs in seeking Supreme Court review of this decision, but such review was denied.

As with the private right of action under section 503, the question of section 504's coverage is still open. We in fact have successfully participated at the district court level as *amicus curiae* on this issue. Moreover, HEW and other Federal agencies, including the Justice Department, have taken the position in their 504 regulations that section 504 of the act does prohibit all employment discrimination by recipients in federally assisted programs or activities. However, should other circuits follow the Fourth Circuit's decision in *Trageser*, handicapped individuals would be permitted only the narrowest grounds under section 504 to assert their right to be free from employment discrimination.

There is, in addition, some other unfortunate precedent on this point. Like section 504, Title IX of the Education Amendments (20 U.S.C. 1681), which prohibits sex discrimination in federally assisted education programs, was modeled on Title VI of the Civil Rights Act of 1964. And the appellate courts in interpreting Title IX, like the Fourth Circuit in *Trageser*, have ruled that Title IX does not generally cover employment discrimination. And, as in *Trageser*, the Supreme Court has thus far declined our petitions for review. (See, e.g. *Islesboro School Com. v. Califano*, 593 F.2d 424 (1st Cir., 1979) *cert. denied* — U.S.—, 100 S. Ct. 467 (19-26-80).)

Lastly, in this survey I am obliged to mention the Supreme Court's decision in *Southeastern Community College v. Davis* (422 U.S. 397 (1979)). Although that decision did not directly pertain to employment, it does suggest that the courts are not inclined to give a broad or liberal construction to the language of Congress in the Rehabilitation Act.

I have attempted to assess realistically the current law with respect to employment and the handicapped. Much of what I have discussed does not bode well for the future. There are, however, courses of action available that should be pursued. One is for the Federal Government to set an example for private industry in this area by demonstrating through the hiring, placement, and advancement of handicapped individuals that it is a realistic and achievable goal. In fact, a voluntary survey conducted in 1977 disclosed that handicapped individuals constituted 6.6 percent of the Federal work force.

President Carter's recent personal appearance before the President's Committee on the Handicapped is, I believe, only the most recent example of his interest in and commitment to the rights of the handicapped. With his continued support, major strides can be made within the Federal Government.

On March 12, 1980, Attorney General Civiletti committed the Justice Department to "the achivement of a marked improvement in the number of minority, women, and handicapped employees within the Department, particularly in high-level and policymaking positions. . .and that [the] Department set an example for the rest of the Government and for the public."

The commitment of the Justice Department to the employment of handicapped individuals reaches beyond our own affirmative action program. As you may know, the President has decided that this Department will shortly assume the coordination responsibility that the now reorganized Department of Health, Education, and Welfare has under section 504. The Civil Rights Division will continue its participation in Federal litigation in this important area.

Legislation, however, will be necessary to secure adequate protection from employment discrimination. Senator Williams introduced in 1979 a bill, S. 446, which would amend Title VII of the Civil Rights Act of 1964 to include among its prohibitions discrimination in employment on the basis on handicap. The administration voiced strong support for the concept of broadening the coverage of Federal law prohibiting employers from discriminating in employment on the basis of handicap. The Office of Federal Contract Compliance Programs estimates that approximately 300,000 Federal contractors and subcontractors are covered under section 503 of the Rehabilitation Act. A general statute, it is estimated, would reach approximately 700,000 private employers, as well as the 30,000 units of State and local government and 50,000 national and local labor unions covered under Title VII.

The Department of Justice, while supporting the concept of such legislation, believed that the bill as reported out of committee was deficient in that it failed to include a statutory provision requiring an employer to make a reasonable accommodation to the impairment of a handicapped person. We believe that such a statutory provision is essential in an amendment to Title VII, because Title VII as written and interpreted does not generally require reasonable accommodation. In the absence of such a provision, we believed, the bill's efficacy could be undermined by judicial decisions that no accommodation was necessary. I call your attention particularly to the decision of the Supreme Court in *Trans World Airlines v. Hardison.*

The Department of Justice continues to support such an effort to obtain further legislation with respect to employment and the handicapped. The participation in American society of this group of individuals on an equal basis has too long been neglected.

In seeking legislation, we should be flexible and realistic without surrendering essentials. Any legislation should broadly prohibit employment discrimination and should include a private right of action. It should also include a Federal mechanism for investigating charges and the right of the Federal Government to bring suit without elaborate prerequisites. Such legislation is essential to bring the handicapped into the mainstream of the American economy and into the mainstream of society.

## STATEMENT OF DREW S. DAYS III, ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS

MR. DAYS. Thank you, Mr. Horn.

Chairman Flemming, other Commissioners and Commissioners-Designate, it is indeed a pleasure to be with you this morning.

I think this is an important consultation and certainly we think at the Justice Department something that deserves the attention of the Commission and other representatives of the Federal Government.

Congress, in its declaration of purpose in passing the Rehabilitation Act of 1973, stated one of the act's goals was, and I quote: "To promote and expand employment opportunities in the public and private sector for handicapped individuals and to place such individuals in employment." The need for such legislation was and is clear. According to the 1970 census over 20 million people in this country, 1 out of every 11 people, are handicapped. This figure is, in all probability, an underestimation of the numbers of handicapped individuals as that term is defined in the Rehabilitation Act of 1973.

The cost of employment discrimination against the handicapped in terms of wages lost is substantial, as is the amount of Federal and State monies expended to support our disabled population.

To that end, it is estimated that in 1980 the Federal Government will spend $40 billion, or 1 out of 13 dollars in the Federal budget, to support disabled persons in America. An estimated additional $60 billion from the States and other sources will be expended. The cost to society, as well as the cost to handicapped individuals in their loss of self-esteem and self-reliance, is, of course, immeasurable. Before this agency, at least, the need that gave rise to the legislation is evident.

I would like to discuss today progress toward achievement of the goal of equal opportunity in employment in the 6 years since the passage of the Rehabilitation Act of 1973. However, I want to underscore something that Vice Chairman Horn said about my various responsibilities with respect to the concerns and needs of the handicapped.

My capacities are several. In my capacity as Assistant Attorney General to the Civil Rights Division, I am, of course, responsible for formulation and implementation of the government's litigation program to enforce the rights of the handicapped. In addition, the 1978 Amendments to the Rehabilitation Act provided for an Interagency Coordinating Council to attempt to achieve consistency among the responsible Federal departments and agencies and to avoid overlap and duplication of effort.

After a number of months' delay in establishing the Council, the Office of Management and Budget asked the Department of Justice to chair the Council, and the result is that I have been acting as Chairman of the Council since August of 1979. We have had seven meetings since that time, and I am pleased to report that the Council is now functioning and is beginning to discharge its responsibility. That is, we have identified many areas of overlap and inconsistency among the various agencies responsible for enforcing the Rehabilitation Act, and I think we are well along the way to resolving many of those problems.

There are, as you know, three separate provisions in the Rehabilitation Act which regulate employment of handicapped individuals. Section 501 addresses the Federal Government's obligation; section 503, the obligation of Federal contractors and subcontractors; and, of course, section 504, the obligation of recipients of Federal financial assistance.

Sections 501 and 503 refer specifically to employment and contemplate affirmative action in that regard. Section 504 prohibits discrimination in federally assisted programs against otherwise qualified handicapped individuals solely by reason of handicap, but no specific reference is made to employment, affirmative action, or a need for reasonable accommodation.

I think it is important to discuss to a certain extent comparisons between these provisions which relate to the employment rights and needs of the handicapped, on the one hand, and Title VII of the Civil Rights Act of 1964, on the other. Unlike Title VII, the Rehabilitation Act does not contain a general prohibition against employers, unions, and employment agencies engaging in employment discrimination against handicapped individuals. Only if an employer is a recipient of Federal financial assistance, or a Federal contractor or subcontractor whose contract is in excess of $2,500, is that employer within the scope of the Rehabilitation Act's provisions. Thus, the reach of the

Rehabilitation Act of 1973 with respect to employment discrimination is obviously far less than that of Title VII; nor is there any clearly conferred right of the Attorney General or other Federal agency to commence litigation to enforce the statute; nor, indeed, is there a private right of action expressly conferred under sections 503 and 504.

With one difference, "handicapped individual" is defined identically for the purposes of 501, 503, and 504. That is, for the purposes of Title V of the Rehabilitation Act, "handicapped individual" is defined as any person who:

1. Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
2. Has a record of such impairment; or
3. Is regarded as having such impairment.

The 1978 amendments, however, excluded from coverage alcohol and drug abusers whose addiction precludes effective job performance, but did so only with respect to sections 503 and 504 as they relate to employment. No such provision was added to section 501.

It seems to me that, as an employer, the Federal Government has a strong obligation under the Rehabilitation Act to ensure that discrimination against handicapped individuals does not occur in its work force. Section 501 of the act requires that each department, agency, and instrumentality in the executive branch of the Federal Government engage in affirmative action in the hiring, placement, and advancement of handicapped individuals.

Furthermore, section 120(a) of the Comprehensive Rehabilitation Amendments of 1978 provides that remedies, procedures, and rights available to Federal employees, as set forth in Title VII of the 1964 Civil Rights Act, are available to any applicant or employee aggrieved under section 501.

So, in partial response to one of the questions directed at Ms. Kaplan, there is this availability to handicapped employees to proceed under Title VII-like procedures against agencies that are not complying with requirements of 501.

The act grants to Federal employees and applicants alleging handicapped discrimination both a substantive right and a remedy, the same remedy available to those who claim discrimination on the basis of race, color, religion, sex, or national origin under Title VII.

As you know, under the President's Reorganization Plan No. 1 of 1978, the Equal Employment Opportunity Commission has the authority to enforce the requirements of section 501 administratively.

The prohibitions and the enforcement mechanisms of sections 503 and 504 differ from those of section 501, and I think thereby provide some additional problems not experienced under 501. Section 503's requirement that Federal contractors and subcontractors receiving contracts in excess of $2,500 engage in affirmative action to employ and advance qualified handicapped individuals is enforced by the Department of Labor. Labor's regulations implementing section 503 provide for enforcement through an administrative complaint and investigation mechanism which includes an administrative law judge; and where there is an apparent violation of affirmative action requirements, there is available to the Department of Labor contract termination or debarment.

It is important, however, to underscore the fact that complainants have no comparable rights to a hearing. The employer does have a right to a hearing.

Section 504's broad prohibition of discrimination in federally assisted programs against otherwise qualified handicapped individuals solely by reason of handicap is supposed to be enforced by each Federal agency or department that administers the funds. As I indicated earlier, section 501 is enforced through mechanisms that are comparable to those under Title VII. In contrast, section 504 is supposed to be enforced administratively in the same way that Title VI of the Civil Rights Act of 1964 is administered, that is, primarily through administrative investigation, attempted conciliation, and either a formal administrative hearing before an administrative law judge looking to fund termination or referral for litigation, and that referral would come to the Department of Justice.

Executive Order 11914 gave HEW the coordinating authority under section 504 and, as you know, required HEW to establish standards and procedures to be followed by other Federal agencies.

As this Commission may recall, there was a long delay between the adoption of the statute in 1973 and President Ford's order published in April 1976, and there was further delay in publication of the HEW coordination regulations, which occurred in 1978. Justice is, I think, no agency to point its finger at this time at other agencies in terms of delay in promulgation of 504 regulations. I am embarrassed to say that our regulations were not published in the *Federal Register* until September 21 of last year. I would like, however, to underscore that, despite the fact that a lawsuit was filed against us, we were well along in the process of developing our regulations and getting them published for comment. But I think the fact that the Department of Justice was sued indicates the absolutely indefensible failure of Federal agencies to come forward with regulations and procedures to deal with this very important area.

The regulations of the Department of Labor under 503 and HEW under 504 define "qualified handicapped individual" as one who is capable of performance with reasonable accommodation. Both sets of regulations require accommodations unless the recipient or contractor can demonstrate that such accommodation would impose undue hardship on the operation of its program or the conduct of its business. HEW has set out some of the factors in determining what constitutes reasonable accommodation. They are: the overall size of the recipient's program, the type of operation, cost, and the nature of accommodation.

Given the very nature of individual handicaps, as well as the varying types of businesses and jobs affected, the definition of reasonable accommodation must be broad enough to encompass a variety of situations. Experience, however, has demonstrated that the cost of required accommodation is often small, and I would like to note also that advancing technology now provides options not available in the past. That is, from my observations of the reasonable accommodation issue, things that yesterday did not appear to be reasonable in light of the definitions that were promulgated then, given technology, given advancement in certain areas, now appear quite reasonable. And I think that we can look toward future developments in technology that will cause us to define in different ways what in fact is a reasonable accommodation and what, on the other hand, constitutes undue hardship.

For example, the development of talking computers has allowed blind and sight-impaired individuals to perform legal research on the Department of Justice's JURIS system without the need for a reader's assistance. JURIS, for those of you who are not aware, is a research tool, a computerized research tool, used by attorneys in the Department of Justice. That system has also been fitted with a slight modification to allow its use by an individual whose hand mobility has been restricted by cerebral palsy.

Sometimes accommodation will merely require the lowering or raising of a desk.

I would like also to refer briefly to section 502. That is another provision of the Rehabilitation Act that, while not directly regulating employment, does have an impact upon accommodation. That section established the Architectural and Transportation Barriers Compliance Board, which is composed of members from the general public, 5 of whom are handicapped individuals, and 10 heads of Federal departments or agencies. It is the Board's function to ensure compliance with the Architectural Barriers Act of 1968.

The Architectural Barriers Act requires that federally owned, occupied, or financed buildings and facilities must be designed, constructed, and altered to make them accessible to physically handicapped individuals. It doesn't take a great deal of elaboration or explanation to understand that even where jobs are made available, to

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the extent that handicapped people cannot get to the jobs, those opportunities become hollow indeed.

Again, looking to the experience of the Department of Justice, we are presently addressing the question of curb cuts on Pennsylvania Avenue so that people who are in wheelchairs can easily reach the Department of Justice through the main entrance as opposed to using other means of egress and ingress.

In the enforcement of Title VII of the Civil Rights Act of 1964—and I raise that act because of its relation to 501 and because of the enormous experience that we have had under that act—litigation has gone through three stages, and I think that we may well see the same stages appearing insofar as employment for the handicapped is concerned. For several years after the act was passed, the primary thrust related to procedural problems, and then for several years after that the principal issues concerned liability—what conduct, in fact, violates the law?—and only in the third stage in the seventies did we reach the question of relief. That is, assuming that there is access to the courts, assuming that a violation has been established, how do we go about developing meaningful remedies for discrimination against the handicapped in employment?

Unfortunately, in the field of equal employment opportunity for the handicapped, we are still primarily in that first or procedural phase of enforcement. The courts are now grappling primarily with those procedural issues whose resolution will mean the difference between whether handicapped individuals will be able to assert their claims of employment discrimination in Federal court.

Let me tick off a few of these procedural issues. Courts are now facing, for example, the question of whether Congress intended to create a private right of action under section 503. I will provide the Commission with a text of my remarks, but let me just do this as beiefly as I can.

Section 503 was patterned in large part upon Executive Order 11246, the contract compliance provision, and the case law developed under the contract compliance program essentially held that there was no private right of action. Very recently, that is, in this year, 1980, the Fifth Circuit Court of Appeals that has responsibility for Federal cases coming out of six Southern States held precisely that with respect to section 503; that is, that there is no private right of action, that handicapped persons who feel that they have been discriminated against by employers who are beneficiaries of Federal contracts have to proceed through the administrative process and cannot go directly to court.

While the question can be by no means considered resolved, should subsequent decisions follow the lead provided by the Fifth Circuit, handicapped individuals will be precluded from bringing actions in Federal court; and while I think those of us in Federal agencies responsible for enforcing provisions like 503 or 504 would like to believe that we are doing our jobs effectively, that we are learning more about how to do our jobs better, I think we also recognize the enormous importance of private enforcement of Federal antidiscrimination laws. It has been our experience under Title VI, it has been our experience under other provisions of Federal civil rights laws, and it should be no different under civil rights laws related to the rights of the handicapped.

On the issue of private right of action under 504, I am happy to say that the picture is far brighter. Most courts have followed the lead of the Supreme Court's decision in a case that did not relate to 504, but instead related to Title IX of the Education Amendments, which has to do with sex discrimination in education. That case, *Cannon v. University of Chicago*, essentially held that while there was a clearly set-out administrative process for persons who believed they had been the victims of discrimination in education based upon sex, there was also a contemplation of a private enforcement mechanism, and that is what the Supreme Court held.

So while the case law development with respect to 504 generally is, I think, very good in terms of private right of action, again, the prospect is not particularly pleasing insofar as 504 and its relation to employment. At least one court has already held that 504 does not cover employment. The Fourth Circuit of Appeals, which sits in Richmond, has so held, and the Supreme Court, despite our fervent pleas to grant review, decided not to grant review. So we have on the books a decision that we refer to as *Trageser*, which says that 504 doesn't cover employment. Again, I need not elaborate upon the extent to which that decision carves out an exception for literally thousands of employers who are the beneficiaries of Federal monies under Federal grants.

The rationale, briefly stated, was 504 is just like Title VI, and Title VI explicitly precludes employment coverage unless certain also set-out conditions are reached. The Fourth Circuit held that 504 was just like Title VI and only where certain special conditions were presented would 504 reach employment.

We have another bleak example of that trend under Title IX. I mentioned earlier that Title IX was helpful insofar as developing the principle of private right of action under 504 generally. Well, the courts have said with respect to Title IX that it doesn't cover employment, and despite our litigating this issue in many courts and quite frankly trying to develop some conflict in the circuits, we have not been able to do so and we have not been able to get the Supreme Court to address itself to this issue.

Lastly, in this survey I am obliged to mention the Supreme Court's decision in *Southeastern Community College v. Davis.* Although that decision does not directly pertain to employment, it does suggest that the courts are not inclined to give a broad and liberal construction to the language of Congress under the Rehabilitation Act. I think that, given that decision, although like most Supreme Court decisions it does not tell nearly the whole story and we can expect other cases coming out of the Supreme Court, it is not an auspicious beginning.

Having said all these things about the Rehabilitation Act and employment, I would like to draw the Commission's attention to legislation that was introduced by Senator Williams in 1979, that is, Senate Bill 446, which was an effort on his part and the part of other members of the Senate to address what is clearly a disharmony and a lack of parallelism between protections for the handicapped under the Rehabilitation Act and protections provided under Title VII. The administration voiced strong support for the concept of broadening Federal law to make the coverage of employment much clearer. This is so for a number of reasons, in addition to basic equity.

The Office of Federal Contract Compliance, for example, estimates that approximately 300,000 Federal contractors and subcontractors are covered under section 503 of the Rehabilitation Act, but in contrast a general statute, it is estimated, would reach approximately 700,000 private employers, as well as the 30,000 units of State and local government and 50,000 national and local labor unions covered under Title VII. That is a big increase in coverage: 300,000 Federal contractors now reached under 503, but under a more general provision we would be talking about reaching 700,000 private employers, 30,000 units of State and local governments, and 50,000 national and local labor unions, which is the coverage under Title VII.

We think that there should be this broadening; however, we believe that to the extent that Title VII is broadened to include protection of the handicapped, it is important to address the question of reasonable accommodation. While there has been a tendency to tack on protected groups to civil rights legislation, we think, given the experience in the courts with respect to reasonable accommodations, implied reasonable accommodations for religious convictions—a case called *Trans World Airlines v. Hardison* —we think that it is very important to build into any amendment the fact that employers will have to address the problem of reasonable accommodation and not leave it unspoken; because, given the TWA decision, the Supreme Court seems to be saying that undue hardship is going to be very liberally construed and what we might regard as a very slight shifting of an employer's operation would absolve that employer of certain reasonable accommodations.

Let me say in conclusion that the Department of Justice continues to support efforts to obtain further legislation with respect to employment of the handicapped. The participation in American society of this group of individuals on an equal basis has been too long neglected.

In seeking legislation, however, we should be flexible and realistic without surrendering essentials. Any legislation should broadly prohibit employment discrimination and should include a private right of action. It should also include a Federal mechanism for investigating charges and the right of the Federal Government to bring suit without elaborate prerequisites. Such legislation, we feel, is essential to bringing the handicapped into the mainstream of the American economy and into the mainstream of American society.

Thank you very much.

**VICE CHAIRMAN HORN.** Thank you very much.

[Applause.]

**VICE CHAIRMAN HORN.** We appreciate the thoroughness of your survey. I take it your testimony will be made available to us, the full text?

**MR. DAYS.** Yes, it will.

**VICE CHAIRMAN HORN.** Donald E. Liebers is director of the equal employment opportunity and affirmative action human resources department for one of America's major corporations, the American Telephone and Telegraph Company. He has been responsible for the development and administration of these programs for AT&T since the early 1970s. He began his career with the Bell System in 1960. In addition to his corporate responsibilities, Mr. Liebers serves as a chair of the Steering Committee for SER—Jobs for Progress, an Hispanic job placement program.

He will report on the experience of the American Telephone and Telegraph Company concerning employment opportunities for the handicapped.

Mr. Liebers.

# THE EXPERIENCE OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY (AT&T) AS AN EMPLOYER OF DISABLED PERSONS

By Donald E. Liebers[*]

Thank you, Mr. Chairman. Good morning, Commissioners. Thank you for giving me the opportunity to speak to you today. As you have been told, I am the director of equal opportunity and affirmative action at AT&T.

AT&T is the parent organization of the Bell System, which includes 19 operating telephone companies, Western Electric, and Bell Telephone Laboratories, which I will refer to as the associated companies.

In my position I am responsible for preparing the Bell System model affirmative action program and establishing the policies necessary for its successful implementation. These, in turn, are implemented throughout the Bell System by the associated companies with guidance from the AT&T corporate staff. My organization also interfaces with departments and agencies of the Federal Government responsible for enforcement of the various civil rights laws and regulations.

I have been in my present position since December 1, 1970, a period in which many of the civil rights laws and regulations have come into effect. I have been responsible for helping the Bell System implement and understand those laws and regulations.

Today I would like to talk about AT&T's experience as an employer of disabled persons and as a government contractor regulated by section 503 of the Rehabilitation Act of 1973, as amended in 1978. I would like to share with you the policies we have established and the programs and actions we have undertaken. We have made and continue to make progress in the employment and advancement of disabled persons. Not without some difficulty, however, and so, I would also like to share our problems and concerns.

Let me begin by stating that it is the policy of the Bell System to provide equal opportunity to qualified handicapped individuals in all aspects of employment, without discrimination. This policy is implemented by means of an earnest program of affirmative action. Both the policy and the program have been endorsed by the presidents of Bell System companies. Their personal commitment and interest in ensuring that the written program is translated into ongoing practices has been communicated throughout each company.

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[*] Mr. Liebers is director of equal opportunity and affirmative action, American Telephone and Telegraph Company.

In keeping with our primary responsibility of lending direction to the associated companies, AT&T issued a model affirmative action program in 1976, soon after the Department of Labor issued amended regulations for employment of handicapped individuals. Bell System companies were advised to use the model as a guide in writing their individual programs. Every effort was made to issue a document to meet the requirements prescribed by Federal regulations. Subsequently, some sections were revised in light of experience and legal interpretations of the regulations. A complete revision of the program was undertaken in 1979, which resulted in the issuance last June of the current model.

The written program basically sets forth our policy governing various personnel practices which the law requires. It is a plan of affirmative actions to be followed to ensure compliance. Implementation of the plan is detailed in various administrative practices.

A major objective of our program has been to mainstream disabled employees. We consider the interests and qualifications of the applicant or employee, then attempt to provide reasonable accommodations necessary to enable the individual to perform the duties of the job. We are seeking to prevent job stereotyping, that is, the idea that only specific jobs are considered for people with certain handicaps. Disabled employees have proven their ability to satisfactorily perform in many different job assignments. Successful placement results from considering each applicant or employee as an individual.

In this regard we have reviewed our job descriptions to ensure that physical and mental job qualification requirements are job related. In addition, we changed wording that we believe was restrictive to disabled workers. For example, a job description that stated a requirement to "write" was changed to "record." Another with a requirement to "talk" was changed to "communicate," and yet another that required "walking" now states "moving."

I would like to identify briefly the areas covered in our program. Then I will be more specific about experience in certain areas which I believe will be of interest to the Commission. The program includes:

- A policy statement of commitment
- Identification of management responsibilities and accountability
- Internal and external dissemination of policy
- Outreach programs
- Hiring, placement, and movement
- Voluntary self-identification
- Reasonable accommodations and accessibility
- Assurance of confidentiality

- Internal monitoring procedures
- Complaint procedures

Implementing this plan has been a real challenge. Some tasks proved to be simple to accomplish, some have been exceptionally rewarding experiences, while others have been tremendously frustrating and confusing. In this regard, I must identify two things that have helped and encouraged us to believe that we will continue to find ways to progress in this area: first, the openness in communications with government representatives and advocates for the disabled; and second, the willing spirit and attitude of managers and disabled employees working together to demonstrate the abilities and productivity of qualified employees who happen to have a physical or mental impairment.

Let me share some of these experiences with you. Voluntary self-identification is one mandate of the regulations which appears relatively easy to accomplish, and to a certain extent it is. Applicants and employees are informed of their rights to self-identify and assured that confidentiality will be maintained. The results of self-identification can be rather perplexing.

Through the years we have used various methods in different companies to meet this requirement. Among these were the posting of permanent notices at employment offices and work locations, direct dissemination of printed notices, and the coverage of voluntary self-identification at employee meetings. Very few employees elected to self-identify, and results were negligible.

As a result, in 1979 we conducted a survey which would assure us that each of our approximately 1 million employees had been informed of his or her right to self-identify and to advise us of possible needed accommodations. This was accomplished by means of a letter addressed to each employee. Again, this survey generated minimal results. A number of employees, significantly less than the number of known disabled employees, chose to self-identify.

This raises several concerns: Does failure to self-identify reveal a fear that knowledge of their disabilities might adversly affect their employment and advancement? Or does it reflect distrust or disbelief in our stated policy? We hope not. Does it mean that those of whose disabilities we have knowledge and those for whom we have made accommodations feel that since we already know, there is no need to tell us? Or does it mean that those employees feel that we are meeting our obligations to the fullest? Perhaps! Does it mean that employees with known and hidden disabilities are just exercising their right not to self-identify, since their disabilities do not impede job performance? Or could there be other reasons which we have not yet recognized? Probably.

Having met the requirements of the law we could ignore these questions until there are other directives to assist us with self-identification. But we feel that we cannot afford to be indifferent about the results of the survey. Based on our experience in gathering this data, I would have to respond, "I don't know," if asked, "How many disabled employees are there in the Bell System?"

We are expanding our approach to voluntary self-identification, keeping in mind that it is the quality of our program that we want to strengthen rather than getting involved in a statistical exercise. Our program will continue to include a provision for self-identification on employment applications. In addition, we will continue our policy whereby employees self-identify at any time and, once each year, will canvass, via employee information media, to remind disabled employees of their rights. In addition, we are exploring other avenues not specified by government regulations but which may be necessary and perhaps more logical than an annual reminder, that is, being able to self-identify at other times in the course of employment, for example, when seeking internal movement, or during counseling and performance appraisals, or when additional training is being considered.

We feel that these efforts will give employees the means to inform us if they feel there is a need for us to know about their condition or the need for accommodation. This leads me into another area which I would like to address, reasonable accommodations.

There are those outside the business who say that anything is reasonable for a corporation the size of ours. Those within the business committed to providing affirmative action must also be concerned with finances, budgets, and a fair return on investments and, therefore, may well balk at such a global solution. However, I believe there is a middle ground and that the intent of reasonable accommodations, as spelled out in the regulations, is not to place undue hardship on an employer.

The Bell System is striving to provide that new buildings and major renovations to existing buildings conform to the American National Standard Institute specifications. In addition, employment offices and areas in existing buildings where physically disabled employees work are made accessible. This has generally proven to be manageable in our business.

Some problems have been encountered because of the individual needs of each person; even when disabilities appear to be similar, the individual accommodations needed may differ. For example, a particular location which was accessible to an employee in an electric wheelchair proved too difficult to be used by another employee who maneuvered his chair manually.

On occasion devices have been provided to disabled employees to enable them to be efficient and productive. As a result of these efforts, we are developing a better understanding of accommodations and their "reasonableness." We have been in contact with agencies involved in rehabilitation which have been helpful. In addition, we have recently undertaken a survey to determine specific devices currently being used by disabled employees. Accommodations, and particularly devices, are a very individual thing. But knowing what devices exist may help a manager expedite placement of a disabled person.

We are living in a time when technological advances are occurring rapidly, many of which will benefit disabled persons. As a result, it appears almost imperative that there be a resource bank to provide the latest information on such devices to employers. Information could be pooled from various sources, including employers, disabled people, rehabilitation agencies, and research institutions. In the absence of such a service, the process of mainstreaming more severely disabled individuals may be seriously hampered.

Other changes brought about by the regulations involve the role of the industrial physician. We view our corporate physicians as being responsible for the determination of medical impairments and the identification of functional limitations. However, they do not make hiring or placement decisions. That is the responsibility of the personnel organization.

No longer accepted is the use of medical restrictions applied uniformly to all persons with a similar disability. Here again, successful placement results from considering each applicant or employee as an individual.

We are concerned about the confidentiality of medical information. Therefore, to the extent necessary, the medical department provides the personnel organization with information about disabilities in functional terms, but does not include a medical diagnosis.

The placement of individuals with stable handicaps generally is not cause for medical concern. Limitations are determined and, when necessary, reasonable accommodations can be provided to match a job with an individual's qualifications and interests. Concerns may arise with respect to the placement of persons having progressive degenerative diseases. Although an individual may currently be qualified for a specific job, it is sometimes difficult to determine how long they may be able to work productively. As a result, their placement in jobs with lengthy training programs may not be considered feasible.

Let me comment about our effort to communicate our policy and commitment to employment of disabled persons. Our contacts with external sources have been an interesting and, I believe, mutually

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rewarding experience. We have communicated our policy and shared the intricacies of putting it into practice in the work place. In return, we have benefited from the expertise of many concerned and responsible organizations, and we see this as an aid towards continued compliance in the eighties. In communicating our policy internally, we recognize that additional information was needed to help our employees understand the meaning of affirmative action for disabled people and how to make it a reality.

Employment interviewers became the first employee group selected to receive handicap awareness training, introduced in several associated companies in 1976. The interviewer was, at the time, seen as key to the success of the affirmative action plan. Subsequently, it became apparent that we had to go farther. Interaction with their peers and supervisors was critical to successful employment of disabled persons. So, we have developed a new two-part handicap awareness training program for employment interviewers and first- and second-level supervisors who will be working with disabled persons. The Bell System is serious about its commitment to employment of disabled persons.

Let me share two examples that I believe demonstrate our position. First, a trial is currently underway in Sacramento, California, to test interface equipment that enables blind persons to become telephone operators at the electronic switchboards that have replaced the cord switchboards, which may be familiar to some of you. The cost of developing this equipment was shared by all the Bell System operating telephone companies. The project grew out of two earlier trials that used less sophisticated interface equipment. However, the earlier trials proved conclusively that blind people can be successful operating the new electronic equipment. We are excited about the potential employment opportunities this equipment will provide for blind and visually-impaired persons in the Bell System.

The other example is one of human interest that involves the employment of the first totally deaf and speechless residence telephone installer in the Bell System. This placement resulted from the cooperative efforts of one operating telephone company and the State commission for the deaf and hearing impaired, sharing the provision of accommodations. These included devices made possible by technological advances. This employee has been working independently and very successfully for well over a year.

Finally, let me shift from the human dimension to the numerical for a moment, specifically, the subject of numerical targets and goals for disabled workers. Current Federal regulations do not require them nor do we feel they are necessary. I believe it would be extremely difficult and not helpful to the concerns of disabled workers to administer a program based on numerical targets and goals. I speak from years of experience implementing a target system based on race, national origin, and sex.

The broad definition of handicap and the multiplicity and degree of disabilities would require an extremely complex and rigid tracking system. We prefer a system based on the needs and aspirations of both the individual and the business, not something based purely on numbers. We think we can fulfill our responsibilities to disabled persons, to our business, and to the government without specific numerical targets and goals. Certainly, a program of voluntary compliance is more effective for all concerned.

To meet this responsibility, we have developed an internal monitoring procedure to ensure compliance with the requirements of Federal regulations and our own affirmative action plan. If internal monitoring identifies deficiencies, then a written corrective plan of action is required. In an era of pervasive regulation we welcome the opportunity to demonstrate that we can fulfill our responsibilities voluntarily.

I hope my comments have provided some insight into a private employer's perspective of its responsibility to disabled persons. Think you for inviting me to share them with you. Now I will entertain any questions you may have.

## STATEMENT OF DONALD E. LIEBERS, DIRECTOR OF EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION, AMERICAN TELEPHONE AND TELEGRAPH COMPANY, BASKING RIDGE, N.J.

MR. LIEBERS. Thank you, Mr. Horn.

Chairman Flemming, Commissioners, Commissioners-Designate, I would like to thank you for giving me the opportunity to speak to you today. As you have been told, I am the director of equal opportunity and affirmative action at AT&T.

AT&T is the parent organization of the Bell System, which includes 19 operating telephone companies, Western Electric, and Bell Telephone Laboratories, which I will refer to as the associated companies.

In my position I am responsible for preparing the Bell System model affirmative action program and establishing the policies necessary for its successful implementation. These, in turn, are implemented throughout the Bell System by the associated companies with guidance from the AT&T corporate staff. My organization also interfaces with departments and agencies of the Federal Government responsible for enforcement of the various civil rights laws and regulations.

I have been in my present position since December 1, 1970, a period in which many of the civil rights laws and regulations have come into effect. I have been responsible for helping the Bell System implement and understand those laws and regulations.

Today I would like to talk about AT&T's experience as an employer of disabled persons and as a government contractor regulated by section 503 of the Rehabilitation Act of 1973, as amended in 1978. I would like to share with you the policies we have established and the programs and actions we have undertaken. We have made and continue to make progress in the employment and advancement of disabled persons, but not without some difficulty, however, and so, I would like also to share our problems and concerns.

Let me begin by stating that it is the policy of the Bell System to provide equal opportunity to qualified handicapped individuals in all aspects of employment, without discrimination. This policy is implemented by means of an earnest program of affirmative action. Both the policy and the program have been endorsed by the presidents of the Bell System companies. Their personal commitment and interest in ensuring that the written program is translated into ongoing practices has been communicated throughout each company.

In keeping with our primary responsibility of lending direction to the associated companies, AT&T issued a model affirmative action program in 1976, soon after the Department of Labor issued amended regulations for employment of handicapped individuals. Bell System companies were advised to use the model as a guide in writing their individual programs. Every effort was made to issue a document to meet the requirements prescribed by Federal regulations. Subsequently some sections were revised in light of experience and legal interpretations of the regulations. A complete revision of the program was undertaken in 1979, which resulted in the issuance last June of the current model.

The written program basically sets forth our policy governing various personnel practices which the law requires. It is a plan of affirmative actions to be followed to ensure compliance. Implementation of the plan is detailed in various administrative practices.

A major objective of our program has been to mainstream disabled employees. We consider the interest and qualifications of the applicant or employee, then attempt to provide reasonable accommodations necessary to enable the individual to perform the duties of the job. We are seeking to prevent job stereotyping, that is, the idea that only specific jobs are considered for people with certain handicaps. Disabled employees have proven their ability to satisfactorily perform in many different job assignments. Successful placement results from considering each applicant or employee as an individual.

In this regard, we have reviewed our job descriptions to ensure that physical and mental job qualification requirements are job related. In addition, we changed wording that we believe was restrictive to disabled workers. For example, a job description that stated a requirement to "write" was changed to "record." Another with a requirement to "talk" was changed to "communicate," and yet another that required "walking" now states "moving."

I would like to identify briefly the areas covered in our program. Then I will be more specific about experience in certain areas which I believe will be of interest to the Commission. The program includes a policy statement of commitment; identification of management responsibilities and accountability; internal and external dissemination of policy; outreach programs; hiring, placement, and movement; voluntary self-identification; reasonable accommodations and accessibility; assurance of confidentiality; internal monitoring procedures; and complaint procedures.

Implementing this plan has been a real challenge. Some tasks proved to be simple to accomplish, some have been exceptionally rewarding experiences, while others have been tremendously frustrating and confusing. In this regard, I must identify two things that have helped and encouraged us to believe that we will continue to find ways to progress in this area: first, the openness in communications with government representatives and advocates for the disabled, and second, the willing spirit and attitude of managers and disabled employees working together to demonstrate the abilities and productivity of qualified employees who happen to have a physical or mental impairment.

Let me share some of these experiences with you. Voluntary self-identification is one mandate of the regulations which appears relatively easy to accomplish, and to a certain extent it is. Applicants and employees are informed of their rights to self-identify and assured that confidentiality will be maintained. The results of self-identification can be rather perplexing.

Through the years we have used various methods in different companies to meet this requirement. Among these were the posting of permanent notices at employment offices and work locations, direct dissemination of printed notices, and the coverage of voluntary self-identification at employee meetings. Very few employees elected to self-identify, and results were negligible.

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I hope my comments have provided some insight into a private employer's perspective of its responsibility to disabled persons. I have provided Mr. Wheeless with some copies of my remarks, in addition to a copy of our model affirmative action plan for your use.

Thank you very much.

[Applause.]

[See Exhibit No. 3 for the Bell System model affirmative action plan for the handicapped.]

VICE CHAIRMAN HORN. Thank you, Mr. Liebers.

I was particularly interested in your comment on the difficulty of finding out what are the handicaps of an employee labor force. Have you experimented with the thought of a companywide blind survey in the sense of no names attached just to find out, when people are not reluctant perhaps to reveal what handicaps they have, what the extent and scope of the various types of handicaps might be?

**Mr. Liebers.** No, we have not. Some of our experience indicates that people who may have a disability don't feel they are handicapped, for example, an attorney with an impaired limb or an arm, or someone with a problem with his or her eyes. They are doing their jobs; they are enjoying them; they are not willing to say, "I have a problem."

I think as time goes on employees may feel more comfortable with this program as it is being implemented and promulgated throughout our nation. Then I think more people may feel it is to their advantage to self-identify.

As I indicated, we will continue asking them, but I welcome your comment on the blind survey and that is perhaps something we ought to be considering.

**Vice Chairman Horn.** Do you think one of the reasons for the large nonresponse rate might be fear of not being able to secure workers' compensation, disability insurance coverage, etc., should something else happen in the work place?

**Mr. Liebers.** I really don't know.

**Vice Chairman Horn.** My instincts are that that is a basic fear which results in a nonresponse in terms of putting one's name to different types of disabilities.

**Mr. Liebers.** That may be.

**Vice Chairman Horn.** Commissioner Saltzman?

**Commissioner Saltzman.** You mentioned, Mr. Liebers, a specification chart, I guess, by some national institute relative to the building and repairs of building. Could you for the record, if you have a copy, submit that?

**Mr. Liebers.** Certainly. I have and I will.

**Commissioner Saltzman.** Okay. And perhaps our staff then could look at those specifications, whether indeed they do meet the needs of the handicapped.

[The report referred to is *American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People* , American National Standards Institute, Inc., New York, N.Y., 1980.]

**Commissioner Saltzman.** I gather you are opposed to goals and timetables to meet the needs of the handicapped in employment.

**Mr. Liebers.** That is correct.

**Commissioner Saltzman.** Are you also opposed to goals and timetables to meet the needs of minority groups in the affirmative action programs?

**Mr. Liebers.** Well, that is a very good question. Let me just say I don't think we have found a better way to do it concerning race and sex and national origin.

I personally have difficulty with number systems. They do take on a quota-like aspect and they do cause difficulties and people sometimes don't go beyond the quota. For example: "If I have one, I got one. I said I would get one and I got it. Now don't bother me."

I would much prefer, as we are doing with the handicapped program, to prove our commitment by having people, when they come into employment offices or when they are considered for promotion, move ahead in our business. I am sure, since we are such a large company, the government is interested in what we do and how we do it. We have had no shortage of direction from the government in how we implement these activities in the past. I think voluntarily we are going to do the job without goals and timetables.

**Vice Chairman Horn.** Commissioner Flemming?

**Chairman Flemming.** Mr. Liebers, I appreciated very much your testimony. As you will discover, because of some of the questions that I would like to address to Assistant Attorney General Days, I do not concur in your concluding comments relative to the inclusion of handicapped in affirmative action plans as far as goals or timetables are concerned.

Mr. Days, you referred to the long delays in the issuance of certain regulations under existing law. Just a general question: As you know, we are confronted with the fact 12 years after the passage of Title VIII that the regulations still have not been issued. In connection with the Age Discrimination Act of 1975, we are up against a problem somewhat similar to the situation that exists as far as the handicapped are concerned. Some departments still have not issued their regulations.

Do you have any suggestions to make as to how, I guess, the Congress in enacting law could include any provisions that would accelerate the issuance of regulations on the part of the executive branch? I feel it goes to the heart of people, our citizens, having confidence in our government. Expectations are raised as a result of the passage of significant legislation; then nothing happens, sometimes for years.

In appearing before the Senate in connection with the amendments to Title VIII, we recommended that Title VIII be amended to direct that the Secretary of HUD should issue regulations within 90 days after the passage of the act. I don't know whether that would help or not, but I was just wondering whether you have any suggestions growing out of your experience in this area to make along that line. It is to me a baffling problem as far as our system of government is concerned.

MR. DAYS. Well, it is baffling and very difficult to address fully, but certainly Congress could help by providing the type of direction that you suggested in terms of timetables for promulgation of regulations. But in fairness to the executive branch, I think Congress also, in some of its recent legislation, has not provided the substantive direction that agencies needed to develop regulations that made some sense.

In my work as chair of the Interagency Coordinating Council, I have certainly become in a way more familiar than I care to with the overlapping jurisdiction under the Rehabilitation Act and the extent to which the Architectural Barriers Board, HEW, and the EEOC are all trying to address matters that relate to employment. I think, to the extent that Congress sets up a number of different coordinating authorities under the same basic legislation, there is going to be delay and difficulty in coming out with meaningful, enforceable regulations. So I think, particularly in the Rehabilitation Act, that has been a problem.

The other is just, of course, the lack of commitment at the highest levels of some of the departments to doing what is required. Again, we have more paper in the government than we know what to do with, and there has to be some way of identifying which things are truly important and which things can perhaps be put on the back burner for a while. Certainly, enforcing civil rights should be in the forefront of any agency's program for developing regulations and enforcement mechanisms.

CHAIRMAN FLEMMING. Well, going to your regulations that you issued in February 1979, in those regulations was there any reference to the inclusion of handicapped in affirmative action plans?

MR. DAYS. Yes, there is. We promulgated our 504 regulations and, insofar as persons are recipients of Federal funds from the Department of Justice, they will have to create plans for ensuring that there is not discrimination against the handicapped in their programs.

We have essentially followed the HEW regulations in large part with some variations to deal with unique programs administered by the Department of Justice; that is, funding to courts and law enforcement agencies and penal institutions.

CHAIRMAN FLEMMING. That means, then, that agencies that are the recipients of Federal funds would have an obligation under your regulations to develop an affirmative action plan which would involve the handicapped and which would include goals, timetables, and an action plan to achieve those goals?

MR. DAYS. Well, what we have done, despite the adverse ruling from the Fourth Circuit, is include coverage of employment in our 504

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regulations. So to the extent that recipients are covered by our 504 regulations, they would have to do certain specific things with respect to employment, not merely with respect to their programs.

CHAIRMAN FLEMMING. I gather there isn't any question in your mind at all but that if we are going to get on a good solid foundation in this area that it will be necessary to get further legislation. As you know, this Commission has gone on record as favoring the inclusion of the handicapped in Title VII, taking into consideration the issue that you identified. Also——

MR. DAYS. Let me make it clear, Dr. Flemming, that when I refer to affirmative action plans I am not using that term in the same way that one would use it under 503, that is, where there is a very elaborate process for dealing with the problems of employment of the handicapped. It is more consistent with the HEW 504 regulations, ensuring that there is adequate access and that reasonable accommodation is provided and so forth.

CHAIRMAN FLEMMING. I see. But does it include the concept of goals, timetables, and so on?

MR. DAYS. My recollection is that it does not contain goals and timetables, although we have gone on record as being in favor of goals and timetables in programs to increase the employment opportunities of the handicapped.

My experience with goals and timetables insofar as minorities and women are concerned has been that goals and timetables force employers to identify appropriate pools of persons for employment. With all due deference to Mr. Liebers, it seems to me that goals and timetables force us to get out and identify various groups of handicapped people who ought to be brought into the work force. It puts the burden on us, as opposed to leaving it to individuals to come forward and educate us to the extent to which they are able to do certain types of jobs.

CHAIRMAN FLEMMING. I concur. I have put it oftentimes that it is a management tool which, as an administrator, I need to have and use if I am really going to accomplish something in the area of equal employment.

You mentioned the right of the individual to sue. Do you feel that it is going to be necessary to get legislation in order to provide that right? As you know, under the Age Discrimination Act of 1975, we recommended to the Congress that they amend that act to incorporate the right to sue, and the Congress did include that. Do you think it is going to be necessary to do that in the area of the handicapped also?

MR. DAYS. Well, as I said, it seems to me there is a substantial problem with 503, the contract compliance provision. Under 504, speaking generally, the law is developing well, although the *Cannon* decision from the Supreme Court had both good and bad elements. The good element was that it allows a private right of action under Title IX, but it seems to me that the negative side of that was that several Justices seemed to be saying, "This is the last time we are going to do this. We are going to read into a statute a private right of action."

Given your work, Dr. Flemming, on the Age Discrimination Act, the Supreme Court now knows that Congress knows how to say it when it wants to create a private right of action. So I think, in terms of development of case law, we are going to have some difficulty arguing in the face of *Cannon* that there is this implied private right of action.

**CHAIRMAN FLEMMING.** You say it might be beneficial if we could get Congress to take that kind of action in the area of the handicapped in light of the development of the case law to the present time?

**MR. DAYS.** Yes. And 503 is a particularly unfortunate area because the Department of Labor has, on a number of occasions, expressed its frustration at not being able to deal administratively with complaints under 503. There is a crying need for private enforcement under that very important provision.

**CHAIRMAN FLEMMING.** Personally, I have great respect for the progress that we have made as a result of private action——

**MR. DAYS.** Indeed.

**CHAIRMAN FLEMMING.** —in all these areas and we are indebted to the contributions you have made along that line prior to the assumption of your present position.

**MR. DAYS.** Thank you.

**VICE CHAIRMAN HORN.** Commissioner Ruiz?

**COMMISSIONER RUIZ.** Mr. Days, you described some weaknesses of the Rehabilitation Act of 1973 and problems arising by the lack of a handicapped person of the right to sue independently without recourse to initial administrative remedies that must of necessity first be exhausted.

You mentioned three stages: one, procedural; two, that of identifying the violation; and, three, the need for meaningful remedies. Now, inasmuch as experience shows that civil rights enforcements are made effective after going through three stages, as our Vice Chairman often says, "Why reinvent the wheel all over again?" if we already know the road that has been charted to be taken in three stages.

Now, since we don't have to grope our way and the Department of Justice, as you related, supports the private right of action and the right of the Federal Government to institute realistic lawsuits, who are those interests that are throwing obstacles in the way? The Bell System is friendly. American T&T's example of volunteering to do that which the law at that time did not even require is to be applauded. But who is the enemy?

You mentioned interlocking committees in the legislative process. You mentioned the lack of commitment in high places in the executive and legislative process. Is it government itself and not the private sector? Certainly, in having gone through three stages before—one, two, and three—we have already learned how to anticipate interlocking committees and the lack of commitment on higher levels. Does the legislative process, the Federal legislative process, only react to national emergencies, overriding emergencies? Wherein lies the enemy?

MR. DAYS. Well, to quote some great American, I think the enemy is us, and I mean that generally.

VICE CHAIRMAN HORN. That was Pogo.

[Laughter.]

VICE CHAIRMAN HORN. I don't know if he is naturalized, or a permanent resident, or an undocumented worker.

MR. DAYS. I think that if we look to the experience of Title VI enforcement—that is, Title VI of the 1964 Civil Rights Act and nondiscrimination in federally funded programs—what we see is a lack of incentive for agencies to enforce that provision. In Washington, one doesn't get a medal up on the Hill for advising a Senator that he or she is denying an employer or a government agency, for example, in the Senator's State a large Federal grant or a large Federal contract. What people are rewarded for in this government is moving the money, getting it out and providing responses to demands for Federal resources throughout the country.

Program people are not interested, it has been my experience, not because they are antagonistic to civil rights or that they are racists or sexists or determined to provide further obstacles to the handicapped in their efforts to obtain equality; it is just that there are not adequate incentives built into the system.

I think, for example, the creation of the unit in OMB, which was a recommendation of many years' standing of the Civil Rights Commission, is a step in the right direction, where program agencies are evaluated in terms of not just how much they are doing in administering their grant programs, but what funds they are spending on enforcement and compliance. It is a very shocking thing—and I have had this experience—to encounter an agency that has a $2 billion program that openly admits that it has one and a half people devoted to Title VI compliance. I think we just have to have the type of recognition of the need for incentives and oversight to get this moving along.

President Carter, in 1977, issued a very strong statement with respect to Title VI enforcement, and there has been some movement in that regard, but not nearly so much now, 16 years after the passage of the 1964 Civil Rights Act.

In terms of the handicapped, it is new; there are a lot of stereotypes that we all have to deal with in terms of the handicapped citizens of the United States. It is a shrinking pie, some people suggest, in terms of jobs and opportunities, so the question is, Why should we expand the number of groups if we are going to have to share that pie? I think there are just hundreds of explanations for this resistance. Of course, there are some people who, in a very reprehensible way, simply say, "That's their tough luck. I've got mine and I'm going to keep it and I'm not going to do anything to allow other people to gain an advantage." There is a fight over who controls the power in this country. It is as old as the Nation. I think the fact that it affects the handicapped, the minorities, and women should not come as any surprise to those of us who read history.

**Commissioner Ruiz.** We are the enemy. Of course, you don't recommend giving medals, but you did mention a unit in OMB to budget in the right direction and intimated that it fell by the wayside.

**Vice Chairman Horn.** No. He was saying that the Civil Rights Commission recommendation of long standing, since a number of us made it in the early seventies, has now been implemented at long last, and that is to have an overall civil rights unit within OMB to monitor the effectiveness of carrying out civil rights activities within the agencies so that they are integrated into the bloodstream of the budget process.

**Commissioner Ruiz.** But it has fallen by the wayside because, although all of that is set up, apparently there are areas that are not covered even by that mechanism in an affirmative manner. Is that correct?

**Mr. Days.** Well, I think it has to be regarded as just a beginning. It needs to be expanded. It should be given more authority. And I think there should be wider recognition on the part of program managers that they will be held accountable for their failure to comply with requirements that relate to antidiscrimination. That message has rarely got down to the point in the Federal Government bureaucracy where it will make a difference.

**Commissioner Ruiz.** In your coordinating position as a coordinator of—how many agencies?

**Mr. Days.** Twenty-eight. There are 30 agencies under Title VI.

**Commissioner Ruiz.** —28 agencies, has the matter of expanding and making more effective the OMB mechanism been implemented in any fashion by way of "We are the enemy; we should bring the pressure"? Has that been done up until now?

MR. DAYS. I am not certain I understand your question.

COMMISSIONER RUIZ. Has a united effort, in which you form part of a coordinating person, given your answer as to the OMB setup—has there in this coordinating setup involving 28 agencies—has pressure been applied in any fashion with relation to coordinating this item which appears to be a weakness?

MR. DAYS. Yes, I think there has been pressure. Both Attorney General Bell and Attorney General Civiletti have personally directed communications to other cabinet officers about deficiencies in their Title VI enforcement programs. As I indicated, the President spoke very forcefully at the beginning of this administration about the importance of Title VI enforcement, paraphrasing the words of Senator Humphrey in terms of the importance of the government not being the supporter of discrimination in our country and the need for all American citizens to know that their money is being spent in a nondiscriminatory fashion.

In our dealings with agencies over the past couple of years, we have seen more responsiveness, but I don't think that we have reached the millenium such that agencies now recognize that they are the problem.

We bring a lot of lawsuits, Commissioner, but it is my firm conviction that if the Federal Government is pumping $125 billion a year into the economy with little or no understanding of how that money is being spent and with every reason to believe that much of it is being used to perpetuate old structures that have precluded people because of their race or their sex, or other conditions over which they have no control, from fair treatment, then all our lawsuits are going to make very little difference, because the force is with that money and we can sue on a piecemeal basis, but ultimately those funds have to be directed in a way that supports and does not obstruct movement toward greater equality.

COMMISSIONER RUIZ. You mentioned writing from your department, which you support, some letters. What I am getting at, sir, is this inquiry: How many times does this coordinating apparatus of 28 agencies meet a year?

MR. DAYS. It does not operate that way, although we have had one session with the grant agencies under Title VI and had another one planned this year until we discovered some of the budgetary constraints that we had to deal with.

Let me say in summary fashion that——

COMMISSIONER RUIZ. I understand the constraints.

MR. DAYS. —that there is a fundamental problem with coordination, period. It is one way to run a government, but I am not certain it is the best way. I don't know whether I have the mechanism that will do the job. But there is something about having even the Attorney General, who is the chief law enforcement officer of the government, responsible for directing those who are in essence his or her peers to do certain things, and unless there is very strong support from the President, unless there is the type of monitoring at the Office of Management and Budget level, unless the Congress is vigilant, it is not going to make a great deal of difference.

Now, we are working as long and as hard as we can to deal with this, but there is something basically wrong with coordination. Perhaps what we need to talk about is authority, total authority, focused in one agency to make determinations about how the funds are being spent, when funds should be terminated, who should be held in violation of Title VI or 504 or some of the other provisions.

I am reluctant, however, to suggest that there is any platonic system that is going to do the job because we always have to deal with individuals and we have to deal with the realities of life in Washington with a very large government. But I suggest to you that to speak about coordination is not to speak in the abstract about a very potent tool for enforcing civil rights laws.

**COMMISSIONER RUIZ.** One more question: Given the weakness of coordination—and I understand the difficulties involved there—you mentioned as an alternative that one agency having powers should be created or should be assigned this particular problem. What agency should that be?

**MR. DAYS.** Well, I hope I didn't say exactly that. What I hope I said was that that is one possibility for dealing with the responsibilities of enforcing these laws.

The downside of that, however, is the feeling that there is kind of a civil rights enforcement ghetto, if you will forgive the term, that suddenly all the other agencies are absolved of any responsibility for enforcing civil rights laws. There is that place over there that will take care of discrimination while we continue to pump the money out.

But let me say, at the risk of being corrected by my boss when I get back to the Department, I really think the Department of Justice is the right place for that centralized authority. It is a position that we took over a year and a half ago in terms of centralized coordination. We accepted that responsibility and no final action was taken in that regard. If anybody can speak for the Government, it seems to me the Attorney General can.

**COMMISSIONER RUIZ.** Thank you very much.

**VICE CHAIRMAN HORN.** I am delighted you mentioned the problems you feel and sense in coordination. This has been a longstanding discussion, as I think you know, within the Commission, a deep feeling among many of us—almost in the words you used—that a cabinet officer cannot really coordinate his or her peers, as you suggest, without that cabinet officer's role being elevated to perhaps a special coordinator for the President, to hold meetings at the White House, etc.

Now, what we have described in this recent interchange—there are three different offices and mechanisms. One is an office of civil rights monitoring in OMB, newly underway, long recommended by this Commission personally to several directors of OMB; another is your role in the handicapped coordination; and still another is the role of Title VI coordination. It is those latter two, I think, that pose the difficulty you talked about: Are you really dealing with your colleagues as assistant secretaries from these agencies? Is the Attorney General dealing with his colleagues as cabinet officers? Or, in essence, is a fourth echelon sent to many of these meetings where you might appear and you are faced not with your counterparts, but with sort of token participation by those from other agencies?

Given the many things you have line responsibility to do, I think you have pointed out very well the difficulties of performing a staff coordination function. So I was surprised in your last answer to Commissioner Ruiz that you think Justice still should have that role when your earlier answer implied—wait a minute—this ought to be escalated to the White House or OMB level to really assure overall governmental coordination. I wonder if you want to make sure I am understanding where your testimony is coming from.

MR. DAYS. Well, I was really speaking about various models and——

VICE CHAIRMAN HORN. Right.

MR. DAYS. —and simply suggesting that if we were talking about one agency to do this within the cabinet, then the Justice Department would be an appropriate place for that. But, again, I am talking about that responsibility being in the Justice Department with very different powers and resources than we have presently to deal with this responsibility.

One of my concerns with respect to the coordination authority under 504 is that we have an Executive order that addresses forthrightly some of the problems we have had under Title VI. One is the question of referrals for litigation and the extent to which the Attorney General can direct another agency to refer certain matters for resolution in the courts. I hope that we can do that in developing the Executive order for 504 coordination because I think it is a tool we desperately need. Where agencies are falling down presently, we have no clear authority to take away that bogged-down administrative process or lack of administrative process and go into court and say, "Mr. or Ms. Federal Recipient, you've just been sued and you're going to have to deal with the problem of discrimination in your operation immediately, not 4 or 5 years down the road after very prolonged and perhaps very confusing administrative process." That is one of the issues.

And, of course, we get down to resources. I am happy to say that even in these lean and austere times, as the President describes them, one of the few places in the Justice Department that got additional resources was the Civil Rights Division in its Coordination and Review Unit to beef up our activities insofar as Title VI coordination was concerned.

I would hate to see those new 14 positions now divided between Title VI coordination and 504 coordination. With the 14, we have a grand total of 23. That gives us one coordinator for every $4 billion, or something like that, to deal with, which is hardly parity where I come from.

**VICE CHAIRMAN HORN.** I might add the Commission voted yesterday to send a strong letter of support for those 14 positions for you to the Senate Judiciary Committee.

Commissioner-Designate Berry?

**COMMISSIONER-DESIGNATE BERRY.** Mr. Days, on this whole matter of coordination that you have been discussing, it seems to me that the two tools that can be effectively used are money and the power to promote or not to promote people who have the jobs that control the money. In my experience in HEW, the most effective tool we have is the Emergency School Assistance Act because the Office for Civil Rights has the right to clear or not clear applications before the funds would be distributed.

Do you think that no matter where you put the power that you have been talking about in government, that so long as some kind of power exists to control whether monies flow or not, that it might be more effective and that the Emergency School Assistance Act can be sort of a model for the kind of general thinking that you are engaged in?

**MR. DAYS.** I would agree. There is, in my estimation, a responsibility on the part of grant agencies to do preaward reviews. They simply are not done. Even postaward reviews are done very rarely. The mechanisms are there. They simply haven't been carried out.

Insofar as Title VI is concerned, the cutoff sanction has, I think, in many people's minds become what a person once referred to as the atom bomb. Well, I never thought that the 1964 Civil Rights Act and the idea of fund termination contemplated that there would be thousands of fund terminations. All we need are a few to get the message across that this is indeed a viable sanction. But I think each program head confronts this moment of truth and says, "For God' s sake, not me. I'm not going to do it. Let somebody else do it," and the message gets out that, "This is really not an effective tool at all. They're never going to cut off funds." So I think that message has to be gotten across to program managers, that we have to have fund cutoffs to retain that as a viable sanction. But it is not going to be something that causes women and children and minorities and the handicapped to find themselves out in the streets in large numbers because of fund terminations.

COMMISSIONER-DESIGNATE BERRY. Well, I just wondered, in addition to fund terminations, as one talks about alternatives, how about not dispensing the funds unless people were in compliance, as is done in the Emergency School Assistance Act, whether it involves the handicapped or women or minorities, whatever the issue?

MR. DAYS. I think that is absolutely necessary.

COMMISSIONER-DESIGNATE BERRY. Thank you. The other question is on the evaluation of administrators. Do you think that it would be good to have this new OMB unit, or somebody in government, responsible for making a determination as to whether people are enforcing civil rights laws, including those related to the handicapped, before they are promoted or advanced in government? Make that a normal part of the evaluation process?

MR. DAYS. Yes, and I believe there has been some movement in that direction. Under the senior executive service, affirmative action components, as I understand it, are supposed to be part of the evaluation, and certainly in drafting job descriptions under the senior executive service in my division, and I would hope elsewhere in the Justice Department, one of the criteria for evaluation will be affirmative action performance, the ability to identify and supervise and promote and use effectively minority, female, and handicapped employees. I think that has to be part of the process. That is the medal process that everybody in Washington understands, and I think we should play on it as much as possible to move this process along.

COMMISSIONER-DESIGNATE BERRY. How about the issue of private action? You seem to be very fond of it in the comments you have made here today. It was always my understanding that some of the outside groups believe that the government ought to be more responsible for spending money for supporting lawsuits and the like, but you seem to be extremely fond, this morning at least, of private rights of action, private enforcement. What accounts for this fondness?

MR. DAYS. Well, having been on both sides of this particular situation as a private civil rights litigant and now in government, I think I can say that there is an ambivalence about this. One day private litigants will say, "Why the heck isn't the government doing more? Why should we be carrying the entire load?" On the other hand, in a case like *Cannon*. I think the private litigants were very pleased when HEW took the position in a brief that the Justice Department helped write that it was institutionally incapable of dealing effectively with many of these problems.

I think the answer is there has to be a balance that clearly—for example, under the Voting Rights Act, the Civil Rights Division has to go after people who don't comply with the law and sue them and bring them to justice. On the other hand, we have to recognize that there is an enormous inertia in government and that even with many more resources than most private litigants have we are slow to function, and it is very important to have people on the outside identifying new issues, bringing lawsuits, devil-may-care, and moving the process along. I think the government is essentially a very conservative institution—all government is very conservative—and it takes the leadership of people on the outside to point the way all too often.

I like to think in the Civil Rights Division that we are moving into some new areas too, but, if I were forced to tell the truth, most of the issues that we are discovering were discovered by the private litigants long ago.

Commissioner-Designate Berry. Mr. Liebers, you made a suggestion that there ought to be some kind of resource bank, items that are available for the disabled, so that information could be made available when you are trying to make reasonable accommodations. If such a resource bank were available, would you believe that there would be a burden on the part of employers to use those resources? And then in arguing that a reasonable accommodation had not been made, one might point to the fact that the information had been made available with the amounts and that the employer had not responded?

Mr. Liebers. I think so.

Commissioner-Designate Berry. So you would agree with that?

Mr. Liebers. Yes.

Commissioner-Designate Berry. So we could use as a standard that there is this resource bank and they have been informed.

Mr. Liebers. I think it definitely would be something to consider. There is one already. I guess it is somewhat small. Frank Bowe's organization has developed it. It is in New York City, and that is a repository for information on many accommodations and devices already. So there is something there, but technology is moving rapidly ahead and I am sure accommodations will be developed very rapidly, too.

If employers have access to them, as well as the handicapped individual, who may say, "Well, this is just what I've been looking for.

Now I can go in and do that kind of work." I think it will benefit both parties.

COMMISSIONER-DESIGNATE BERRY. And have you thought about, in terms of trying to find out how many handicapped or disabled people you have or will have, in addition to doing a blind survey, giving rewards to people for identifying themselves as handicapped?

MR. LIEBERS. I haven't thought of that, but I will consider it, too.

COMMISSIONER-DESIGNATE BERRY. Thank you. I have no further questions.

VICE CHAIRMAN HORN. Staff Director Nunez?

MR. NUNEZ. No questions.

VICE CHAIRMAN HORN. Let me just mention, without asking you a question, Mr. Days, that I want to put in the record a summary legal update published in *Education U.S.A.*, May 5, 1980, on the cases under the Education for All Handicapped Children Act, P.L. 94–142. We are concentrating on employment in much of this consultation. Too often we forget that employment opportunities are often severely limited based on educational opportunities that either preclude or relate to employment opportunities. This is a rather interesting summary.

[See Exhibit No. 4.]

VICE CHAIRMAN HORN. Thank you, gentlemen, for your very helpful testimony and the contributions which each of you are making, one in the government sector, one in the private sector, to attain some progress in this area.

[Applause.]

VICE CHAIRMAN HORN. Let me say to our guests in the audience that the Commission apologizes to those who could not find seats and to all people we have here for the crowded conditions. I think we ought to explain on behalf of the staff and the Commission that in planning this consultation the Commission staff surveyed 40 Federal facilities and hotels seeking a barrier-free accommodation for these dates. The only one available was this Holiday Inn.

Based upon experience with previous consultations, we thought the size of the facility would be adequate. The commitment and concern of persons dealing with the civil rights issues of the handicapped obviously exceeded expectations and resulted in what is a very splendid turnout, much more than many other consultations we have had in much larger facilities.

During the luncheon break, the staff will make efforts to improve this situation, to increase the seating to the extent allowed by the fire regulations.

We would like to ask that all individuals with hearing problems sit on the right side of this room so they may see the interpreter and we will also reserve space for those in wheelchairs.

We do thank you for your patience and understanding. We are now recessed for lunch.

**Chairman Flemming.** Will the consultation come to order, please. I am going to ask my colleague, Commissioner Saltzman, to preside during our deliberations this afternoon. Commissioner Saltzman.

## Private Employment and the Handicapped

**Commissioner Saltzman.** Can I ask the witnesses to please take their places. Ms. Milk.

Ladies and gentlemen, Ms. Milk, who will be speaking on employment and the handicapped, specific implications for private employment, is the executive director of Mainstream, Inc. She has been that since 1976.

Mainstream is a nonprofit organization dedicated to the issues of the handicapped. It focuses on compliance, assistance, public information, media relations, legislative liaison, conferences.

Before joining Mainstream, Ms. Milk had extensive experience as a communications consultant, public relations specialist, and freelance journalist for industry, government, and community agencies. She will summarize for us her paper on private employment and the handicapped. Ms. Milk?

# OUT OF SIGHT, OUT OF MIND, OUT OF WORK: BARRIERS TO EMPLOYMENT FOR HANDICAPPED PEOPLE

### By Leslie B. Milk*

Picture the American workplace. It can be any workplace—anywhere there are people making automobiles, or ashtrays, music, baskets, or money. If the place contains only men—even if it is a professional football team's locker room after a game—someone will complain. If all the workers are white, someone will report that something is amiss. Depending on the part of the country, someone will ask, Where are the Hispanics, the Asian Americans, the Native Americans? But no matter where the workplace, no matter what the work, we know that no one will ask, Where are the people in wheelchairs? One out of 11 Americans, handicapped individuals and disabled veterans, can be routinely excluded without a public hue and cry.

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* Ms. Milk is executive director, Mainstream, Inc., Washington, D.C.

When we say that America works, we do not speak of handicapped Americans. When other groups are excluded from the work force, we assume it is by evil design. When disabled people are excluded, we assume it is by accident or we ignore the absence completely. People with disabilities are out of sight, out of mind. Therefore, it is not surprising that they are also out of work.

Thirty-five million Americans, according to the 1970 census, are called handicapped as the result of a physical or mental condition that limits their activities. And in the case of the handicapped in America, if you have the name, you are out of the game—out of jobs, out of job training, out of opportunities other Americans take for granted.

Even a history of disability may be enough to deny many opportunities. Persons with cancer in remission or epilepsy under medical control often face the same barriers and biases as those with visible disabilities. It is the biases and the barriers that create handicaps, many people with disabilities say. Limitations become handicaps when society uses the tangible evidence of limitations to further limit the disabled.

## Defining Disability

One of the unique aspects of defining the problems disabled people face in employment is the difficulty of defining disabled people. Up until the passage of the Rehabilitation Act of 1973, "handicapped" meant "visibly handicapped." The popular conception of disability was that of poster child—the blind, the deaf, the users of crutches and wheelchairs. Mentally handicapped people fell into another category. Everyone else with a physical or mental limitation was simply seen as "sick."

The Social Security Act used a different definition of disability: "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than 12 months." But for survey purposes, the Social Security Administration broadened the definition further to include people with a limitation in the kind or amount of work they can perform (including housework) resulting from a chronic condition lasting 6 months or longer. Under this definition, disability is self-assessed rather than medically determined. It encompassed those unable to work because they were "occupationally disabled" and must therefore change their line of work or "having secondary work limitations" could do only limited amounts of work.

Under the Social Security Act definition, 3 million adults under the age of 65 were disabled. Under the Social Security Administration survey definition, in 1972, 7.7 million severely disabled adults between the ages of 20 and 64 were counted, along with 3.5 million "occupationally disabled" and 4.4 million with secondary limitations.(¹)

In the study, the Social Security Administration determined that most of the disabled people it surveyed were out of the work force. According to Sar Levitan and Robert Taggart, who analyzed the findings of the 1972 study, only a seventh of the severely disabled were employed in 1972 and only 6 percent held full-time jobs. Among the occupationally disabled, 45 percent held full-time jobs, compared to 61 percent of the nondisabled population. Handicapped women fared worse than handicapped men—only 1 in 10 severely handicapped women engaged in gainful work. Even the occupationally handicapped woman was forced into part-time employment as the only work alternative.

Women were not the only ones to suffer doubly from double stigma in the workplace. While 48 percent of disabled whites were unemployed, 58 percent of the disabled blacks were out of the work force. Blacks also showed a greater tendency to be disabled—accounting for 9 percent of the nondisabled adult population in 1972, but a full 16 percent of the severely disabled adult population.

The double disadvantage of handicap and low socioeconomic status showed up dramatically in the earnings figures. The earnings of disabled white men age 45–54 were two-fifths of those of the nondisabled. Disabled black men in the same age bracket earned only one-fourth as much. Handicapped black women earned only 8 percent the salaries of the white men.(²)

Fully 25 percent of all persons out of the work force were disabled. Three-fifths of the disabled adults of working age were at or near poverty level, earning an average income of $1,600 if unmarried and $6,000 if married, including contributions from others living in the home, insurance benefits, annuities, and income-maintenance monies. Further, 20 percent of all families on welfare were headed by a disabled person.

These figures are dramatic—and they may be incomplete. Disability in the studies was still being defined by the individual—and considering the stigma that being called "handicapped" brings with it, many, many people with handicapping conditions chose never to self-

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[1] Sar A. Levitan and Robert Taggart, *Jobs for the Disabled.* Policy Studies in Employment and Welfare No. 28, The John Hopkins University Press, 1977.

[2] U.S., Census Bureau, *Persons With a Work Disability,* PC(2)-6C. U.S. Government Printing Office, 1973, table 9.

identify. In addition, the figures do not reflect the fact that severity of disability is not always the most important factor in employability. A paraplegic with a Ph.D. in physics may be less handicapped in employment than an assembly line worker who had one epileptic seizure. The world of work operates with an informal but very pervasive idea of who is handicapped and who is not. But the presumption of handicap, it was realized, handicaps thousands of people. As a result, when Congress passed the Rehabilitation Act of 1973, it sought to define disability not only medically or personally, but functionally. The law said, in effect, you are handicapped if the world treats you as such.

Thus, the legal definition of handicpped was expanded to include three categories of individuals:

(1) those with handicapping conditions that substantially limit one or more major life activities,

(2) those with a history of such a condition or,

(3) those who are "regarded" as having such an impairment.(3)

The first category corresponded to the traditional concept of handicap. The second recognized, as previously stated, that people were being denied employment based on a history of a condition such as mental illness, cancer, or heart disease, despite the fact that they were symptom free and able to perform the job in question. The third definition included in the protected class those individuals who suffered discrimination because of public perception of them or the private conclusion of the employer that they posed a risk. For example, a person with a limp, a facial disfigurement, or extremely small stature, although in no way physically or mentally limited, might still be routinely denied employment. Also common were cases where a person was denied employment because the corporate physician or personnel manager predicted that at some time in the future the individual might be handicapped. People with back X-rays that showed abnormalities or extreme obesity were often subject to this type of discriminatory treatment.

Disabled veterans rated at 30 percent disability are similarly protected by the Vietnam Era Veterans Readjustment Assistance Act of 1974.(4)

The laws sought to protect, for purposes of employment, only those people who were qualified as well as handicapped. In other words, a person needed to be able to do the job in question, with reasonable accommodation, to enjoy the legal protections of the Rehabilitation

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[3] The Rehabilitation Act of 1973, 29 U.S.C. §706(b) *et seq.*, as amended by Rehabilitation Act Amendments of 1974, Pub. L. No. 93-516, 88 Stat. 1617 (codified in scattered sections of 29 U.S.C.), Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, Stat. 2955 (codified in scattered sections of 29 U.S.C.).

[4] Vietnam Era Veterans Readjustment Assistance Act of 1974, 38 U.S.C. §2012 (1974).

Act. The term "qualified" has been generally defined by the job in question and standards for employment or rejection must be job related. Reasonable accommodation generally means modification of the work site, the work schedule, or the job itself to accommodate a handicapped person. Accommodations include accessibility—the ability to get to the job location and use the work environment. This concept will be amplified later.

Another factor in the consideration of a qualified handicapped individual is the ability to function in the work environment. The definition of "handicapped" was further broadened in 1977 when Attorney General Bell issued an opinion defining drug addicts and alcoholics as handicapped. This opinion was recently upheld in class action litigation brought against the city of Philadelphia.(5) Later, this broadened definition was incorporated into the 1978 Amendments to the Rehabilitation Act. However, it is essential to note that this protection extends only to individuals who are "qualified" as well as handicapped.

Alcoholics or drug abusers who are disruptive or unable to function in the work environment are not "qualified" and thus probably would not be covered under the Rehabilitation Act.

The broad definition, the concept of both public and self-identification, and the complex concepts of "qualified with reasonable accommodation" have made it more difficult to count the number of handicapped people ready and willing to enter the work force. The 1980 census is both too limited (only a small percentage received the long form) and too broad (questions on disability were very unique) to provide much usable data. We have not yet defined the extent of the disabled population who could enter the work force. However, we have begun to define the factors that will keep handicapped individuals from entering it.

## Discrimination

For the first time, the Rehabilitation Act linked disability and discrimination and allowed the government to make the connection legally, while its protections were limited to those seeking employment or promotions with employers who were either Federal contractors doing $2,500 of business with the government annually, or recipients of Federal financial assistance, or the Federal Government itself. The evidence uncovered in the enforcement of the law stressed that denying employment on nonjob-related grounds was discrimination. We began to uncover mounting evidence to support the conclusion that high unemployment and low earnings were not a

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[5] Davis v. Bucher, 451 F. Supp. 791 (E.D.Pa. 1978).

function of disability—but a function of the way disabled people were treated in the economic marketplace.

This record was enhanced by State laws outlawing discrimination and active State commissions on employment and human rights which began to enforce them aggressively. As a result, assumptions about what disabled people could or could not do, and could or could not be prevented from doing, began to come tumbling down.

A case in point is *Duran v. City of Tampa,* (6) where an applicant had been rejected for a police job because of a history of epilepsy. Mr. Duran brought a civil rights action against the city and its civil rights board. At the hearing, the court denied plaintiff's motion for a preliminary injunction and also denied defendant's motion to dismiss.

Expert testimony had established, at the hearing, that plaintiff had outgrown a childhood history of epilepsy, that he had no greater proclivity for having a seizure than any person in the general population, and that from a medical perspective he was perfectly able to serve as a policeman. Moreover, Mr. Duran had previously proven himself otherwise qualified by passing written and oral examinations. The trial court, therefore, held that, "At minimum, the due process clause mandates that the defendants provide. . .an individual determination" of his fitness. The court expressed itself as "especially predisposed against irrebuttable presumptions which are inextricably intertwined with prerequisites of public employment and which are without basis in fact."(7)

At the subsequent trial, the court directed that if the applicant passed a physical examination which omitted consideration of his history of epilepsy, the city must hire plaintiff and give him back pay and retroactive seniority rights.(8)

## Employment Standards

Like the Tampa case, most discrimination against handicapped people occurs without malice. It is based on assumptions about work and the people who have worked before. It is based on decisions about disability, not individual disabled people. Decades after it became unacceptable to say all black people have rhythm, it is still perfectly acceptable to state, "the deaf are good workers in print shops," "epileptics cannot operate machinery," "diabetics shouldn't drive," or "people in wheelchairs should not have to travel."

When faced with challenges to these stereotypes, employers often cited risk prevention or protection of the handicapped as the motivation for their actions. But courts and administrative agencies

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[6] Duran v. City of Tampa, 430 F. Supp. 75 (M.D.Fla. 1975).

[7] *Id.* at 78.

[8] Duran v. City of Tampa, 451 F. Supp. 954 (M.D.Fla. 1978).

had begun to note that protection is no excuse for discrimination and that across-the-board exclusionary employment standards are as much a discriminatory employment practice as a sign posted stating that, "No cripples need apply."

In other words, physical or mental standards must relate directly to job functions. A recent case concerning section 504 illustrates this point.(9)

*Gurmankin v. Costanzo* dealt with the application of inappropriate employment standards. An appellate court held that the school district of Philadelphia could not refuse to consider blind persons as potential teachers of sighted students. The court found that the school board's policy violated due process by creating an irrebuttable presumption that blind persons are unable to be competent teachers. Thus, the court concluded that the school district had improperly failed to provide the plaintiff with an opportunity to demonstrate her particular abilities as a school teacher.

In an article on the subject, Brian Linn, a former attorney for the National Center of Law and the Handicapped (NCLH), has cited several cases that indicated, "the concept of individualized determination recognizes that assumptions based upon disability are usually misleading." He has noted that, "the developing case law. . .indicates that fair employment practices with handicapped individuals require a focus upon the person's present ability to do the job."(10)

This concept of individualized discrimination has been applied in *Frazer Shipyards, Inc. v. Department of Industry, Labor & Human Relations,* (11) in which the court held that all diabetics could not automatically be disqualified from welding jobs. Although some diabetics might pose a substantial hazard to themselves or to coworkers, the burden of proof is on the employer to show that a particular applicant poses a hazard.

An employer could not refuse to hire an individual with acute lymphocytic leukemia on the grounds that the individual would probably have a higher absentee rate, according to a decision in *Chrysler Outboard Corp. v. Department of Industry, Labor & Human Relations.* (12) In a similar case, an employer was denied the right to refuse employment as a firefighter to an applicant with a heart murmur on grounds that his physical disability might make it impossible for him to perform job duties in the future.

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[9] Gurmankin v. Costanzo, 556 F.2d 184 (3rd Cir. 1977).

[10] Brian J. Linn, *New Trends in Employment Discrimination Litigation,* 14 *Trial Mag.* 32 (No. 10, Nov. 1978), pub. by Association of Trial Lawyers of America.

[11] Fraser Shipyards, Inc. v. Dept. Of Industry, Labor and Human Relations, 13 F.E.P. Cases 1809 (Wis. Cir. Ct. 1976).

[12] Chrysler Outboard Corp. v. Dept. of Industry, Labor and Human Relations, 14 F.E.P. Cases 344 (Wis. Cir. Ct. 1977).

The issue of employment standards made headlines when the Supreme Court decided the first case to deal with the Rehabilitation Act. While the case dealt with education, employment standards were certainly key to the decision. Ms. Davis, a hearing-impaired applicant to a clinical nursing program, was denied access on the grounds that she would never be able to function effectively as a nurse.

The emotionally charged image of a registered nurse unable to hear and heed a patient's cry for help is not likely to produce a sober-minded analysis of accommodation of employment standards for disabled people. The High Court ruling did set limits on the rights of handicapped people and did uphold the right to establish "necessary physical requirements." But handicapped people cannot any longer be denied access to jobs and job training based on broad exclusionary standards.

## *Reasonable Accommodation*

Another subtle factor in denying employment opportunity for people with disabilities has been the denial of accommodations. Employers have often assumed that a person must do the job the way it has always been done, with the equipment used by all previous jobholders and on the schedule previously adopted. The fact is that 95 percent of the severely disabled employees hired by the Federal Government required no accommodation at all, according to a study undertaken by the Office of Selective Placement several years ago. However, employers frequently cite the need to make accommodation as the reason for employment denial. The cost of creating an accessible work environment is also cited as a barrier. In fact, Mainstream has been able consistently to demonstrate that this cost is grossly overrated, based on our experience in the field. After nearly 200 surveys of architectural accessibility in the private sector, Mainstream estimates that the average cost of retrofitting old buildings, from factories to office buildings to retail stores, is about 5 cents per square foot. Businesses routinely spend more than twice that amount to clean their vinyl floors. In addition, the tax deduction for the removal of architectural barriers was recently extended until 1983 for costs incurred in places of employment.(13)

The cost of individual accommodation (modifying work sites, purchasing auxiliary aids, etc.) has also been greatly overestimated. Many people who do require accommodation can acquire the funds for it through insurance companies eager to get them back on the payrolls and off the disability rolls, through vocational rehabilitation, or through a service group concerned with that particular disability.

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[13] Pub. L. 96-167, passed Dec. 29, 1969.

Most job accommodations occur on paper through job restructuring. The idea of reasonable accommodation under section 503 has posed far fewer problems in the employment sector than even the regulators anticipated.

The following are some examples Mainstream has gleaned from its experience in working with employers:

- A worker with epilepsy was not required to rotate shifts frequently, although other workers are required to do so. (Some persons with epilepsy, diabetes, and some other conditions respond badly to frequent changes in schedule.)
- A university provided an airconditioned workspace for a worker with a respiratory condition, although this was an exception to the school's energy conservation program.
- A woman using leg braces received permission to park close to the building entrance (many organizations reserve this right to persons using wheelchairs, although other people have equal difficulty with mobility).
- An alcoholic was permitted to take extended leave without pay to participate in a structured treatment program.
- A mobility-impaired assembly line worker was moved to a station near the door, so that she would not be jostled during the rush to lunch or breaks.

One area of anticipated problems was that of negotiating job accommodations for disabled people within the structure of the negotiated labor agreement. While there are difficulties, we are seeing that even in that arena accommodation is possible. When considered on an individual basis, labor and management working together can accommodate a handicapped individual through informal agreement or by negotiating a memorandum of understanding to attach to the labor agreement. However, handicapped individuals often fail to be employed because it is assumed that the union will not cooperate. Once again, we face discrimination by assumption.

## Attitudinal Barriers

Attitudinal barriers based on guilt, assumption, stereotype, and misinformation often confound those disabled people who seek employment. These are particularly difficult to confront when dealing with the hidden handicaps. Many were previously viewed as illnesses rather than disabilities. Mental illness, diabetes, and back problems are among those cited as "sicknesses" by those who profess to support affirmative action for the truly handicapped but have grave doubts about the legal definition. Since the concept of reasonable accommodation can mean time off for treatment or rehabilitation, altered work schedules, and flexitime, employers fear disrupted schedules and decreased production.

While we expect that hidden handicap cases will increase in the eighties, we should note that *all* the cases to reach the administrative complaint stage in the Department of Labor's enforcement efforts for section 503 have concerned hidden handicaps.

What we are seeing is the emergence of attitudinal barriers that are not always hidden when dealing with hidden handicaps. Many myths about handicapping conditions are so pervasive that employers are unembarrassed to cite them as the justification for not employing people. For example, people with heart disease cannot endure stress—and who has a job to fill without stress? Mentally restored persons are rejected for the same reason. Those with histories of drug or alcohol abuse are seen as unstable people who "choose to abuse." And the problems of cancer patients—even recovered cancer patients—are made more acute by the generally accepted view that cancer is a certain death sentence.

Tom Dotson wrote an article in *Texas Business* (14) last year about his and others' personal experience in seeking employment after a diagnosis and treatment for cancer:

> They—the ones we are talking about—are extremely qualified, they have excellent work histories. They are physically fit, in the sense of performing as many hours as is necessary to get the job done. A professional headhunter would consider them prime candidates—except for this little entry on the application—for most jobs in their field in which they show interest. That one drawback, that lone blur, has to do with the fact that somewhere along the line they made the unforgivable mistake of contracting a disease called cancer. It's a death word, cancer is: it spells D-O-O-M—it, the word itself, makes people shudder and wince and occasionally look at you as they might look at a recently struck-down animal on the freeway.

At last last word, Tom Dotson was still alive and well, working for *Texas Business*.

Disabled Vietnam-era veterans also face unique attitudinal barriers. Partly it is the result of the "shoot the messenger" syndrome for those whose very presence reminds us of an unpopular war. Partly it is because of the image of the Vietnam veteran as a flawed individual, suffering from irreversible psychological damage as the result of his or her brutalizing experiences in combat. Despite what we know about drugs and the Vietnam experience, veterans with a history of drug abuse or alcoholism face an uphill struggle in the workplace.

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[14] Dotson, "Only A Ghost of A Chance," *Texas Business*, August 1977, pp. 18-22.

## *Legal Remedies*

One of the greatest frustrations for people like Tom Dotson, who perceived discrimination, has been the limit on legal recourse to rectify the situation. Section 503 of the Rehabilitation Act specifically provided for discrimination by institutions that benefit from Federal financial assistance. However, advocates for handicapped people have been dissatisfied by the Federal recourse alone, citing backlogs of cases waiting to be investigated and limits in Federal staffs to handle the caseload.

Many disabled people have used State and local remedies, since 36 States and many more cities prohibit discrimination on the basis of disability. But a major goal for the handicapped will be the establishment of a clear right to private action in the Federal courts.

Advocates have argued that 503 and 504 offered an implied right of action. This right was found in the *Camenisch* case(15) in Texas in considering 504, a few years ago. The court cited the case backlog in the Federal Department of Health, Education, and Welfare and therefore granted relief to Mr. Camenisch on the grounds that any HEW administrative relief would likely take too long to be an effective remedy.

Cases dealing with the right to sue under section 503 have come down on both sides of the issue. In California, in *Hart v. Alameda County,* (16) the U.S. district judge ruled that administrative penalties of contract termination and debarment, "do not provide the kind of narrow, specific relief appropriate to remedy individual instances of discrimination" and may be supplemented by court action. In New York a Federal court ruled similarly in the case of *Chaplin v. Consolidated Edison Company.* (17) This case has added significance because, for the first time, the Federal Government filed an *amicus* brief stating that private right is necessary because the administrative process involves no direct remedy to the individual complainant. The judge in the case also noted that a backlog of some 2,000 pending section 503 cases would prevent complainants from obtaining timely responses unless they have the right to pursue their cases in court simultaneously.

However, it is too soon to urge handicapped people to go out and find a lawyer if they feel they have faced discrimination. In a Federal appeals court decision on the combined cases of *Moon v. Roadway* and *Rogers v. Frito-Lay, Inc.,* the court found against a private right to sue. The majority opinion stated that, "the handicapped may simply have

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[15] Camenisch v. University of Texas, No. A-78-Ca-061 (W.D. Tex., May 17, 1978).

[16] Hart v. County of Alameda, 21 F.E.P. Case 235 (1979).

[17] Chaplin v. Consolidated Edison Company of New York, Inc., 48 L.W. 2541 (1980).

the right to petition those who administer federal contracts to perform their duty."

What of those employers not bound to the government through grants or contracts? For those employers it remains business as usual in dealing with disabled applicants and employees unless State and local lawmakers intervene. The last session of Congress considered amending the 1964 Civil Rights Act to extend to handicapped people protections now covering so many other minority groups. It never emerged from the committee. Until this provision is added to law, handicapped people continue to face the world of work disabled in law as well as in fact.

## Sheltered Employment

No discussion on employment of handicapped people can ignore the issue of sheltered employment. In recent years, the *Wall Street Journal* has exposed abuses of the so-called protected environment for severely disabled people. Similar reports that sheltered workshops exploit the workers, paying them literally in peanuts or in pennies, have been circulating for some time. However, these reports simplify a very complicated issue. There are some concerns about sheltered versus competitive employment, but they must be balanced by an understanding of the different needs of different disabled people.

Perhaps the wisest course is to upgrade the placement and reevaluation programs associated with sheltered workshops to be certain that only those people whose handicaps are so severe as to preclude competitive employment are encouraged to work in a sheltered setting. In 1977 as many as 11,400 persons, or about 42 percent, of the people in sheltered workshops requiring reevaluation did not receive it. In most States studied by the General Accounting Office, the handicapped individual's potential for competitive employment was not even considered.([18]) Since one of the functions of sheltered workshops is to act as transitional employment, the reevaluation process is very significant.

The Assistant Secretary of Labor for Employment Standards is charged with responsibility for oversight of sheltered workshops and review of all requests for waiver from minimum wage requirements. These requests must be monitored carefully to ensure that disabled people are being paid reasonably for the work they do. In addition, corporate employers who use sheltered workshops must be continually reminded that this does not constitute affirmative action. For severely disabled people, sheltered employment may be better than no employment at all. However, it can never be a substitute for working in the mainstream of the marketplace.

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[18] "Better Re-evaluations of Handicapped Persons in Sheltered Workshops Could Increase Their Opportunities for Competitive Employment," Report to the Secretary of Health, Education, and Welfare by the General Accounting Office. HRD 80-34, March 11, 1980.

Nor should the stereotypes of "sheltered employment jobs" be allowed to continue. For example, many mentally retarded people in workshops repeat one simple operation endlessly because it is assumed that is all they can perform. But there are recent efforts that demonstrate the capabilities of retarded people to perform complex assembly operations with creative training methods which isolate each part of the process and teach these parts on a step-by-step basis. This is called "Try Another Way." The potential for thousands of people to develop more interesting, challenging, and better paying working lives may not be limited by their abilities, but by our abilities to prepare them for work.

## *The Agenda for the Commission*

Most of the barriers outlined in the report were not discovered by Mainstream, Inc. They have been known by rehabilitation and placement specialists, advocates, and disabled people trying to move into the work force. What is needed is the catalyst to turn knowledge into action. The Rehabilitation Act of 1973 acted as a catalyst in its limited arena. But the fact that this was a special law once again isolated handicapped people from the mainstream of civil rights activity. In the coming decade we must legitimize the aspirations of handicapped people to assume their rights to full participation in the workplace.

There are a number of steps that can and should be taken by the United States Commission on Civil Rights to work toward this end. The first is to accept responsibility for dealing with the concerns of handicapped Americans as part of the civil rights agenda of the Nation. The fact is that exclusion feels the same whether it is based on race, sex, age, or disability. Disabled advocates realize that prejudice for the handicapped often masquerades as protection. However, for those people capable of living independent lives, the comforts and securities of dependence will never be enough. Equal will always be better than protected and unequal. Handicapped people are following in the footsteps of other civil rights movements in declaring that it is time to get off the plantation, and the endorsement of the Commission will go a long way toward legitimizing the movement for justice in the job market.

Another important step is to support the passage of legislation to include people with disabilities in the protections of Title VII of the 1964 Civil Rights Act. This would achieve three important goals: expansion of employment rights, clarification of judicial rights, and recognition of the human rights of handicapped people.

Extending blanket protection against discrimination in all employment must be a first step in the effort to remove employment barriers. Many experts have questioned the ability of the Federal Government to monitor compliance with such a blanket statute, since worker availability statistics do not currently exist for handicapped people and disabled veterans. In a meeting last June, Eleanor Holmes Norton, Chair of the Equal Employment Opportunity Commission, assured disabled advocates that the EEOC had the technology to develop such statistics if the responsibility for doing so was given to the agency.

There are a number of approaches that can be taken to develop the information needed for adequate oversight. One approach is to focus on the handicapped population. Civil Rights Commission support for inclusion of questions on disability on the 1982 minicensus would ensure that useful data would be available for just this purpose. There is a proposed survey questionnaire that deals extensively with disability issues. Administration of this questionnaire in 1982 will add to our ability to see and serve the handicapped.

There are also a number of untapped resources for information on the availability of handicapped workers. The Department of Labor's Employment Service Automated Reporting Systems is one such resource. According to that office in the Employment and Training Administration, 782,400 handicapped individuals applied for assistance in finding employment in fiscal year 1979 alone.

Monitoring activities can also focus on the workplace as well as the workers themselves. Architectural barriers, exclusionary employment standards, discriminatory referral practices, and other factors result in systemic discrimination against the handicapped. Systemic discrimination can and should result in enforcement action. The most recent OFCCP administrative case settlement dealt with the issue of systemic discrimination. A Texas company had denied employment to 85 prospective employees based on exclusionary medical standards. The individuals, whose disabilities ranged from color blindness to varicose veins, became an affected class because of the employer's discriminatory policies. The resulting back pay award of $225,000 is certainly an effective vehicle for "encouraging" other employers to review their employment practices.

Beyond expansion of employment rights, inclusion in Title VII would clarify judicial rights for the disabled. Section 503 of the Rehabilitation Act provides administrative remedy through the Department of Labor for handicapped people who believe that they have been victims of discrimination. In the past 2 years, the Department of Labor has convinced disabled people that they mean to use the administrative process vigorously—with the ironic effect that 1,100 section 503 complaints are currently backlogged at the Department of

Labor. Even if the administrative process could handle all cases, it would not be sufficient remedy. Handicapped people need the freedom to go to court. In a Nation of litigators, the judicial process should be available to all. As previously noted, disabled people have been trying to find a private right under section 503, and many have drowned in the murky waters of legislative history and congressional intent in the process. The inclusion of disabled people in Title VII would flatly end the debate. Will this increase the number of suits in the courts of the Nation? We certainly hope so. In such a new area of civil rights law, we need the substantial record of case law and precedent to build a solid legal foundation for disabled people—and for the communities legally mandated to move them into the mainstream.

In addition, granting a private right would enable the administrative process to work more effectively—to select cases that deal with important compliance issues, to target its efforts where employment opportunities for protected groups are the greatest. As long as the government remains the only remedy, it must fully investigate every case—the very process that plagued EEOC in the past.

It must also be recognized that a private right grants the disabled individual a hand in his or her own destiny. Administrative complaints are essentially a dialoge between contractor and government. A person who believes that he has been wronged should have the right to act in his own behalf to have that wrong redressed.

Bringing disabled people into the mainstream of civil rights law through inclusion in Title VII would also be a moral victory.

When Congresswoman Barbara Jordan of Texas said that the framers of the Constitution had not included her and minority people like her in their thinking, she echoed the sentiments of handicapped people everywhere. We are always told that we are special—special education, special programs, special legislation to protect our rights. But growing up handicapped in America, I learned what "special" meant—and I tried to get unspecial every way I could. Special means separate, and as the Supreme Court said, separate can never be equal. To have Congress and this Commission endorse the inclusion of disabled people as a protected group—with all the other protected groups—would be the best protection of all, because it is not special, not separate—just equal.

The ultimate goal of handicapped people in employment is not extraordinary. In fact, it is to gain the right **not** to be extraordinary. Employment of people who happen to have disabilities must become not an extraordinary part of doing business in the United States. Reasonable accommodation must be afforded to handicapped people who are no more "special" than their nondisabled counterparts. Handicapped people who catch colds, seek promotions, and are noticeably grumpy before their first cup of coffee are no longer willing to pretend to be superhuman just to get and keep jobs. And more and more handicapped people are asking for the same recognition for extraordinary performance as the nondisabled now enjoy—not on a plaque, but in the paycheck.

That is the message that this Commission can convey to the people of the United States.

For people with disabilities, employment is the key issue because employment is the great equalizer. It was when I became a professional journalist—and I became a professional journalist at the age of 10 as the editor of the sixth grade news—that I stopped being the kid with the arm and started being the kid with the brain. It is work that makes Frank Bowe not a man who cannot hear, but a man who can make others hear the voices of disabled people as they have never been heard before. The opportunity to earn your daily bread, even if you cannot bake it yourself, is probably more important to handicapped people than to others because the focus for excellence is necessarily limited. The possibilities for excellence need not be, if opportunities for employment were not so often denied.

This Commission is well known for its ability to arouse our national conscience. In essence, that is what we are asking now. Until you do, the majority of handicapped Americans will remain out of sight in the workplace. They will also remain out of work.

## STATEMENT OF LESLIE B. MILK, EXECUTIVE DIRECTOR, MAINSTREAM, INC., WASHINGTON, D.C.

Ms. MILK. I have been asked to summarize the barriers facing employment for disabled people. I would ask you, first of all, to picture the American workplace. It can be any workplace, anywhere there are people making automobiles, ashtrays, music, baskets, or even money. If the place contains only men, even if it is a football team's locker room after a game, somebody is going to ask, "Where are the women? There's something wrong." If the place contains only white workers, someone is going to report that there is something definitely wrong. And depending on the part of the country, someone is going to ask, "Where are the Hispanics, the Native Americans, the Asian Americans?"

But no matter where the workplace, no matter what the work, we know that no one is going to ask, "Where are the handicapped people?" One out of 11 Americans can be routinely excluded without public hue and cry. Handicapped people are out of sight, out of mind, in the workplace and, therefore, it is not surprising that many of them are also out of work. When we say, "America works," we don't speak about handicapped Americans.

One of the unique aspects of defining problems disabled people face in employment is the difficulty in defining disabled people.

Up until the passage of the Rehabilitation Act, "handicapped" has generally meant what you can see. The popular conception of disability has been that of a poster child, people who could not see, could not walk, people who use crutches or wheelchairs. Anybody else with a physical or mental disability was called simply sick.

The Social Security Act has come up with a very elaborate definition of disability, including anything that can be expected to result in death, the ultimate handicap, or has lasted or can be expected to last for a continuous period of not less than 12 months. But for survey purposes, even they couldn't use that definition, so they expanded it further to include people with a limitation of any kind of the amount of work they could perform, including housework, resulting from a chronic condition lasting 6 months or longer.

Under the Social Security Act definition, 3 million adults under the age of 65 were called disabled. Under the Social Security Administration's survey definition in 1972, 7.7 million severely disabled adults between the ages of 20 and 64 were counted as unemployed, including 3.5 million occupationally disabled and 4.4 million with secondary work limitations.

This study discovered what we already know, that most severely handicapped people are out of the work force. We also discovered that handicapped women fared worse than handicapped men. Only 1 in 10 severely handicapped women engages in gainful work.

Women are not the only ones to suffer doubly from double stigma in the workplace. Forty-eight percent of disabled whites are out of work; 58 percent of disabled blacks are. Blacks, also, as Frank Bowe pointed out this morning, show a much greater tendency to be disabled.

Fully 25 percent of all persons out of the work force are disabled; 20 percent of all families on welfare are headed by disabled people. These figures are dramatic and we are pretty sure they are not complete. Disability is still being defined by the person, and considering the stigma attached to being called handicapped, we know an awful lot of people are not choosing to be counted.

We also know that severity of disability is not always the most important factor in employment. A paraplegic with a Ph.D. in physics may be less handicapped in employeemnt than an assembly worker who has one epileptic seizure one time in his life.

The world of work operates with an informal but a very pervasive idea of who is handicapped and who is not, and the presumption of handicapped alone handicaps thousands upon thousands of people. As a result, as Mr. Days pointed out this morning, the Rehabilitation Act of 1973 defines disability functionally. It says, in effect, you are

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handicapped if the world treats you as such. For the first time, through the Rehabilitation Act, we have been able to link disability and discrimination. We have allowed the government to make that connection legally.

While its protections are limited to those seeking employment or promotion with employers who are Federal contractors, recipients of funds, or the Federal Governemnt itself, we have been uncovering evidence to show that denying employment on nonjob-related grounds is, in fact, discrimination. We are beginning to uncover mounting evidence to support the conclusion that high unemployment and low earnings are not the function of disability, but the function of the way disabled people are treated in the marketplace.

State laws have helped us to build that record, and we are facing over and over again the conclusion that the problem is not what disabled people can or cannot do, but what we assume they can or cannot do, what we prevent disabled people from doing.

Let me cite the case of *Duran v. City of Tampa.* Mr. Duran had had one epileptic seizure at one point in his life. He had outgrown the condition. He applied for a job as a policeman and he was turned down. He sued. Expert testimony established at the hearing that the plaintiff had outgrown the childhood history of epilepsy, that he had no greater proclivity for having a seizure than any person in the general population, and that in the medical perspective he was perfectly capable of serving as a policeman. He had proven himself on both written and oral examinations. The court agreed with Mr. Duran. They said that he had at minimum the right to due process, mandating that they provide an individual determination of his capability. In other words, they had to consider Mr. Duran and not epilepsy. In fact, Mr. Duran is working as a policeman in Tampa.

Like the Tampa case, most discrimination against handicapped people occurs without malice. It is based on assumptions about work and people who have worked before. It is based on decisions about disability, not on individual disabled people. Decades after it became unacceptable to say all black people have rhythm, it is still perfectly acceptable to say deaf people are good in print shops, epileptics can't operate machinery, diabetics shouldn't drive, and, of course, people in wheelchairs should never have to move at all.

When faced with challenges to these stereotypes, employers often cite risk prevention or protection of the handicapped individual as the motive for their action. But courts and administrative agencies have begun to note that protection is no excuse for discrimination, that across-the-board exclusionary employment standards are as much of a discriminatory employment practice as a sign that states, "No cripples need apply." In other words, physical and mental standards must relate directly to job functions.

There have been a number of cases dealing with this issue. One in Philadelphia involved a blind person who was repeatedly denied a job as a teacher on the basis that since she was blind, she couldn't possibly teach sighted students. Once again, the court said this was an irrebuttable presumption, that in fact they had to consider her on her merits and they could not automatically conclude that someone who was blind could not teach the sighted.

This also came up in another case where somebody was told that diabetics cannot automatically be excluded from welding jobs. Some diabetics might pose a substantial hazard to themselves or coworkers, but the burden of proof is on the employer to show that a particular applicant poses a hazard.

The issue of employment standards made headlines when the Supreme Court considered the *Davis* case. It is true the *Davis* case dealt with education, but it was definitely dealing with employment standards: "Could she ever be a registered nurse since she was hearing impaired?" I submit that the emotionally charged issue of a hearing-impaired nurse who could neither hear nor heed a patient's cry for help is not exactly likely to produce a sober-minded analysis of employment standards for handicapped people.

It is true that the High Court did rule that valid physical requirements were a legitimate consideration, but we believe that in this very special case it is not fair to generalize, that in fact in employment the biggest barrier people face is unfair employment standards.

Another subtle factor for denying employment opportunity has been denial of accommodation. Employers have often assumed that a person must do the job the way it has always been done, that they must use the equipment used by all previous jobholders and the schedule previously adopted. The fact is that 95 percent of the severely handicapped people hired by the Federal Government require no accommodation at all, according to a study of a couple of years ago by the Office of Selective Placement.

Most of the time accommodation costs very little. There are funds available from rehab, from insurance companies, and from service providers dealing with that particular disability. I would caution you, please, do not fall in love with the technology when we talk about accommodation.

Several years ago Mainstream employed a very young secretary who had a terrible time getting to work in the morning. Being experts in the field of employment of the handicapped, we designed any number of accommodations because we felt her problem was she could not hear the alarm and, therefore, we were thinking about some kind of device which would shake her bed. We later discovered she was spending every night with her boyfriend and the last thing she needed was a device that shook her bed.

Able-bodied people love technology, and certainly for disabled people, for many of them, the technology has been a lifesaver. But an awful lot of handicapped people have discovered ways to accommodate that don't require the very expensive devices that may be available and may assist other people.

In terms of the cost of access—the removal of architectural barriers—when Mainstream first got into this, we discovered that the cost of access was being cited as a barrier. In fact, we have an architect who surveyed more than 200 facilities, from factories to retail stores to heavy petroleum plants, and our estimate is that the average cost of removing barriers is 5 cents a square foot. That ought to be looked at in light of the fact that business routinely spends 17 cents a square foot to clean their vinyl floors. So when we talk about the cost of access, most of the time the cost is negligible.

Another anticipated area of problems was labor agreements. How can you accommodate people in light of legitimate negotiated labor agreements? We found that there are ways even in this case to make accommodation, that labor and management working together can, without modifying the basic bargaining agreement, develop informal agreements or memoranda of understanding that go along with the labor agreement, and that in fact it is possible to work through. Again, the barrier was not the labor agreement; it was the assumption that negotiation was impossible.

Probably the biggest barriers, though, are attitudinal. They are not in the mortar; they are in the mind. To tell you about these, I have borrowed a story from Mainstream's founder, Harold Krents, who is a blind lawyer and who certainly knows a great deal about employment, since he was turned down by 42 law firms while looking for a job.

While he was at Oxford studying, he was put in the hospital and they sent him down with an orderly to the X-ray room for fear that this blind person could not possibly do anything by himself. He got down and the nurse said to the orderly, "What is his name?" The orderly turned to Krents and said "What is your name?" He answered, "My name is Harold Krents." The orderly said, "His name is Harold Krents."

They then proceeded and the nurse turned to the orderly and said, "Where was he born?" The orderly turned to Krents and said, "Where were you born?" You know, blind people seem to have a terrible problem with hearing, so you have to be very careful, clearly articulate, "Where were you born?"

This went on for several minutes and, while I hate to destroy the stereotype, Mr. Krents, while handicapped, does not always have a wonderful disposition. Occasionally, he is not even an inspiration to mankind. And, therefore, he began to lose his temper and said, "Now, look, I'm only standing 2 feet away from you. Both of you must now be very clear: I do not need an interpreter." The orderly turned to the nurse and said, "He says he doesn't need an interpreter."

So what we are dealing with here is that probably the biggest barriers are attitude, based on guilt, assumptions, stereotypes, misinformation, and this is what handicapped people face when they go for jobs. The hardest probably are those dealing with hidden handicaps, which are very often seen as illnesses rather than disabilities. So that people who genuinely believe that they are supporters of handicap rights do not agree when it comes to people with hidden disabilities when the concept of reasonable accommodation would include time off for treatment or rehabilitation, altered work schedules, flexitime, or what employers fear will be disrupted schedules and decreased production.

Nearly all the cases that have so far reached the OFCCP administrative complaints stage have dealt with hidden handicaps, and the attitudinal barriers facing these people are not always hidden. Let me give you an example.

Somebody with cancer goes to apply for a job, and I think the best person to describe this is a man named Tom Dotson who wrote an article in *Texas Business,* because he does have cancer, and he wrote about his personal experience in seeking employment and those of people like him.

> They, the ones we are talking about, are extremely qualified, they have excellent work histories. They are physically fit, in the sense of performing as many hours as is necessary to get the job done. A professional headhunter would consider them prime candidates, except for this little entry on the application, for most jobs in their field in which they show interest. That one drawback, that lone blur, has to do with the fact that somewhere along the line they made the unforgivable mistake of contracting a disease called cancer. It is a death word, cancer is. It spells doom. The word itself makes people shudder and wince and occasionally look at you as they might at a recently struck-down animal on the freeway.

At last word, by the way, Tom Dotson is alive and well and still working for *Texas Business.*

One of the greatest frustrations for people like Tom Dotson who perceive discrimination has been the limit on legal recourses to rectify the situation. Sections 503 and 402 specifically provide for administrative relief; however, advocates and people working in the field cite the number of backlogged cases as saying the administrative remedy alone is not enough. Many disabled people have used State and local remedies, but the major goal for handicapped will be the establishment of a clear private right of action in the Federal courts, as mentioned this morning by Drew Days.

There have been a number of cases that have come down on both sides of that issue. The problem is that, because the law was written in what has to be called a sloppy way, it is not at all clear whether or not handicapped people have the right to go to court.

In addition to that, what about all those employers who are not bound to the government through either contract or Federal funds? As usual, those employers can do business as they have always done it, and that means without handicapped people.

In its last session, as was mentioned this morning, Congress considered an amendment to the 1964 Civil Rights Act to extend protection to handicapped people. It never emerged from committee. Until this provision is added to the law, handicapped people will continue to face employment disabled in law as well as in fact.

Most of the barriers that I have talked about here were not discovered by Mainstream. They have been known by rehabilitation specialists and by handicapped people for a very long time. Certainly, the Rehabilitation Act is a catalyst, but it is a very limited law, and the fact that it is a special law once again isolates handicapped people from the mainstream of civil rights activity.

In the coming decade we must begin to legitimize the aspirations of handicapped people to assume their full right to participation, and there are a number of steps that can be taken by this Commission to do that. You have taken the first one, to accept responsibility for dealing with the concerns of handicapped Americans as part of the civil rights agenda of the Nation. The fact is exclusion feels the same whether it is based on race, sex, age, or disability.

Prejudice against the handicapped often masquerades as protection, but to those capable of leading independent lives, the comforts and securities of dependence will never be enough. Handicapped people are following in the footsteps of other civil rights movements of declaring that it is time to get off the plantation, and the endorsement of this Commission is certainly a help. Another would be to support vigorously passage of legislation to include disabled people in the Civil Rights Act of 1964.

We have talked about the need to expand judicial rights, to give people the right to go to court, and, I think, the need to establish case law and precedent to back up the claims of disabled people. It is very important that they have the right to go to court.

Another certainty is just the basic legitimizing of handicapped concerns by putting handicapped people into this pool, the regular civil rights pool.

We also know there has been concern about worker availability statistics and we believe it is possible to create those. Chair Norton assured us last year that the technology exists to create them within EEOC.

I think also we are beginning to deal with systemic discrimination, looking at the workplace rather than only looking at the worker in terms of dealing with discrimination as something we can catch, something that we can see.

But the most important thing is to provide for handicapped people the right not to be separate. Growing up handicapped in America, you find out that separate and special will never be equal, and that is probably the most important concept that we want to bring here today. We want to be in the mainstream of civil rights activity.

When Congresswoman Barbara Jordan of Texas said that the framers of the Constitution had not included her and other minority people like her in their thinking, she echoed the sentiments of handicapped people everywhere. The ultimate goal of handicapped people in employment is not extraordinary; it is the right not to be extraordinary. It is the right to be rewarded for extraordinary performance, not on a plaque but in a paycheck where it counts.

People with disabilities believe that employment is a key issue; it is the great equalizer. I think it is work that makes Frank Bowe not a man who cannot hear, but a man who can make others hear what they have never heard about disabled people before, and that is the kind of thing that we are asking for, the right to earn our daily bread even if we cannot bake it ourselves, justice in the job market. It is merely that simple.

I think this Commission is known for its ability to rouse the conscience of a Nation, and we are hoping that once again you will be able to do that, to remind the country that justice, if not equal for all, is disabled for all. Unless and until you do that, disabled people will remain out of sight, out of mind, and out of work.

COMMISSIONER SALTZMAN. Thank you for that statement. It was both informative and moving.

## Federal Panel

COMMISSIONER SALTZMAN. Coming now to our Federal panel, Mr. James D. Bennett will lead off. He is currently a special advisor to the Deputy Director of the Office for Civil Rights, Health and Human

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Services Department, on matters relating to the implementation of section 504 of the Rehabilitation Act of 1973. He was formerly Director of the Technical Assistance Unit of the Office for Civil Rights, which developed the section 504 regulations.

Mr. Bennett, I hope you won't mind, but I am going to be keeping time because we are rather behind our schedule, and I will let you know when you have 5 minutes left.

## STATEMENT OF JAMES D. BENNETT, SPECIAL ADVISOR, OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Mr. Bennett.** I want to thank you for this opportunity, as the representative of the agency which formerly had responsibility for the oversight on the development of 29 Federal agency regulations for section 504, to focus your attention on the opportunity that now exists for you to take a leadership role and speak out on the development of the section 504 regulations by the various agencies in the Federal Government.

It is a crucial time in this developmental process. The Department of Health, Education, and Welfare has been split. The responsibility for the development, the oversight of the Federal agency regulations has been moved to the Department of Justice. The minimal efforts which the Department of HEW had made in coordinating the enforcement of the various section 504 regulations and the development of government-wide technical assistance programs to help implement the regulations are no longer being made. We do not know whether Justice will choose to develop the government-wide technical assistance program and a coordinated enforcement program. They clearly have the responsibility and intention of overseeing the development of the section 504 regulations.

The opportunity exists now just because of the split and the change in leadership roles. We need to get the regulations out. The regulations that are being developed by the 29 agencies have not all emerged. In fact, most of them are still stuck in those agencies in a developmental process.

Recently, a lot of progress has been made, but we are about 2 years overdue in the process. The longer this developmental process drags out, the more chance that the regulations will not be implemented properly. We need to get resources assigned in the various agencies to get the regulations implemented once they are out. This does not appear to be happening to the extent that is necessary for proper implementation.

Finally, there is a great need for an agency to coordinate enforcement and technical assistance on a government-wide basis. The need for this type of approach is pointed out by the fact that many recipients of Federal funds which section 504 covers receive funds from various agencies. They will be subject to the regulations of several agencies. They will be subject to several sets of enforcement mechanisms in those agencies. They will have access to various sources of information that may or may not be compatible and consistent. All this can create a great deal of confusion. It can lead to poor implementation, no implementation, or a backlash against the regulations.

So to keep this brief, I would encourage the Commission to take this opportunity to provide leadership and insist that the regulations emerge from the departments and agencies in a timely fashion, that resources be assigned to implement the regulations in all the agencies, and that some agency take the lead now—not in 2 years when the regulations are out, but now—in developing an enforcement strategy that is consistent and that is government wide, and a technical assistance program that is consistent and applied to the whole government.

Thank you.

**COMMISSIONER SALTZMAN.** Thank you. You are within your time. We appreciate that.

Joseph M. Hogan is the Chief of the Branch of Program Policy of the Office of Federal Contract Compliance Programs, the United States Department of Labor. As Chief of the Program Policy Branch in the Department of Labor's Office of Federal Contract Compliance Programs, Mr. Hogan is in charge of developing policies and regulations concerning the obligations of Federal contractors under Executive Order No. 11246, section 503 of the Rehabilitation Act of 1973, and section 402 of the Vietnam Era Veterans Readjustment Act of 1974. He joined the Office of Federal Contract Compliance Programs in October 1978 after serving as Deputy Director of Contract Compliance Programs in the Defense Department.

Mr. Hogan.

## STATEMENT OF JOSEPH M. HOGAN, CHIEF, BRANCH OF PROGRAM POLICY, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, DEPARTMENT OF LABOR

**MR. HOGAN.** Thank you very much. I am pleased to be here to represent the Director of OFCCP, Mr. Weldon Rougeau.

I would like to pick up on one of the very important points made in Leslie Milk's presentation. That was her noting very pointedly that in the workplace today the absence of minorities is readily apparent. There is a level of sensitivity connected with that sort of problem. The absence of women is readily apparent and is a matter of concern. The

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absence of the handicapped seems not to be surprising, seems not to be alarming, seems not to trigger any sort of affirmative action as yet. It is a serious problem of awareness. There is a need for consciousness raising.

Let me describe the activities of the Office of Federal Contract Compliance Programs in terms of that need and attempt to show how we feel we can address that need. Section 503 directs the Department of Labor to ensure that the handicapped are afforded their employment rights by Federal contractors. The Office of Federal Contract Compliance Programs existed prior to receiving that statutory authority and it existed for the purpose of assuring that minorities and women receive their proper employment rights. There was an existing organization—it was established nationwide—it was going into literally thousands of workplaces throughout the country attempting to enforce the employment rights of minorities and women.

At the time the responsibility for handicapped persons was added, the Department of Labor treated that somewhat separately in terms of identifying a limited number of specialists, training them in this area and seeking to deal with the complaints that were presented and to, as it were, get accustomed to the problem, learn about the problem, so that we could work effectively.

The program was also organized in the period before 1978 in a very diverse way. Reminiscent of some of the things that Mr. Bennett just said, there were a dozen Federal agencies carrying out the actual operations under the general oversight of the Department of Labor. None of those other Federal agencies were deputized, as it were, to carry out work on behalf of the handicapped.

There were a number of problems connected with this type of organization and, as a result, the President ordered a reorganization of contract compliance. It took effect in October of 1978 and the essence of it was that all of us who had been in other agencies were made part of the Department of Labor and the program was unified. The variations in enforcement abilities and enforcement willingness among the agencies disappeared and there was now, under the direct responsibility of the Secretary of Labor, a program which would reach nationwide, would be under a single unified direction.

In connection with that, the very important decision regarding the handicapped program was that we would immediately change from having a relatively small number of specialists working out of Washington and out of the Labor Department to making the assurance that contractors are actively pursuing their obligations for the handicapped, making that part of every compliance review that is carried out throughout the country. Now, this means that in the first year of consolidation there were over 3,000 contractor establishments reviewed. The review included a review of the affirmative action being taken for the handicapped. That was the first year after consolidation. In the present year we anticipate that nearly 7,000 reviews will be conducted and in the next fiscal year approximately 8,000, which may be approximately the plateau that our resources will permit us to reach.

But the essence of this change is that the Department of Labor, through its Office of Federal Contract Compliance Programs, will be visiting a very large number of workplaces in every part of the country, bringing some of the awareness that is so evidently missing to every industry, every company of any size, and I think there is nothing more immediate than the physical presence of a compliance officer in the plant or in the office, in the establishment of the contractor, asking very specific questions about what has been done vis-a-vis accommodations, vis-a-vis accessibility, and what is to be done.

I should mention generally the size of the program. This is a program that has nearly 1,500 individuals employed. Over 1,300 of those are located in the field. There are 71 area offices which operate the program throughout the country.

One thing that was necessary and which has just now been completed is all of the reviewers (between 900 and 1,000 reviewers) have received special training in enforcement of section 503 of the Rehabilitation Act. Having just reached that point where all the professionals are equipped to fully carry this out, we anticipate that every review and every complaint investigation now can be done by persons who have been specially trained and who are prepared to bring to the employers the consciousness that they need, and where there is not willingness on the part of the contractors to make the changes that need to be made, there is a very strong willingness to proceed into enforcement.

Many of you may have read recently about a settlement of nearly a quarter of a million dollars arrived at on behalf of a class of approximately 85 handicapped persons. There will be announced, I think within the next few days, the largest individual settlement, an amount over $100,000, for an individual complainant that has ever been reached through conciliation. Just literally within the next few days, when that is approved at the headquarters, there will be a release on that subject.

There are more administrative complaints in our enforcement process on behalf of the handicapped at the present moment than there are on behalf of minorities and women, so there is a great deal of emphasis.

I think the capability of the Office of Federal Contract Compliance Programs to be effective in this arena is a rapidly growing thing. It started from a rather modest level at the time of consolidation, and I think as it becomes a full part of our program, carried out by every one of our professionals throughout the country, we hope that OFCCP can be a very important force for employment equity for the handicapped.

Thank you.

COMMISSIONER SALTZMAN. Thank you, Mr. Hogan.

Clayton G. Boyd is the Executive Secretary of the Interagency Committee on Handicapped Employees of the Equal Employment Opportunity Commission. Mr. Boyd's committee studies issues relating to hiring, placement, and advancement of persons with disabilities and recommends policies, procedures, regulations, and legislation to facilitate affirmative action and nondiscrimination in Federal employment.

A former rehabilitation counselor, Mr. Boyd is fluent in sign language. He also conducts workshops for rehabilitation counselors, employers, and government officials. He moderated the session on civil rights at the 1977 White House Conference on Handicapped Individuals.

Mr. Boyd.

## STATEMENT OF CLAYTON G. BOYD, EXECUTIVE SECRETARY, INTERAGENCY COMMITTEE ON HANDICAPPED EMPLOYEES, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

MR. BOYD. Thank you very much.

Leslie Milk describes a group of Americans as diverse as any could be in terms of race, color, national origin, sex, and age, yet they are united by the common denominator of exclusion from full participation in our society because each has a disability. What unites this group of handicapped individuals also unites handicapped individuals with other protected classes.

Ms. Milk says that persons with disabilities should be brought into the civil rights movement and placed on the civil rights agenda as a fully acknowledged protected class. The Equal Employment Opportunity Commission (EEOC) saw this as the intent of the President's Reorganization Plan of 1978, which transferred to EEOC responsibility for enforcing laws and regulations prohibiting discrimination in Federal employment on the basis of physical or mental handicap and requiring affirmative action by Federal agencies to hire, place, and advance handicapped individuals. At the same time, Executive Order 12067 empowered EEOC to coordinate the equal employment opportunity enforcement activities of all Federal agencies with regard to all protected classes, handicapped individuals as well as women and minorities. EEOC interpreted these Presidential directives as a mandate to mainstream persons with disabilities in the civil rights movement.

Prior to the reorganization that took place in January 1979, affirmative action programs pursuant to section 501 of the Rehabilitation Act of 1973, as amended, consisted primarily of structured attempts to remove barriers that prevent handicapped persons from having equal employment opportunities. Programs were judged by the success with which existing barriers were removed. What was not looked at was the bottom line: the degree to which handicapped individuals were being integrated into the Federal work force and representation of handicapped individuals in the Federal work force as compared to representation in the civilian labor force.

When EEOC assumed its new responsibilities, persons with disabilities in the Federal sector came under the jurisdiction of the only Federal agency that has as its sole responsibility protection of the employment rights of individuals. Emphasis in affirmative action programs was shifted to achievement of measurable results, and for the first time Federal agencies were instructed to establish goals and timetables for employment of persons with specified severe disabilities. This was—and is—an important step forward.

A question that arises is, "Goals in comparison to what?" Initially, we shied away from looking at the bottom line, because we are not very confident about the handicap statistics available for the work force in general. There are statistics, however, that indicate approximately 5.95 percent of persons in this country of work force age and able to work have a disability severe enough to substantially limit either choice of employment or ability to find a job. We believe this 5.95 percent figure is accurate enough to serve as a reference point for goals. Nonetheless, we do need better data, and for this reason EEOC favors the disability survey the Bureau of the Census plans to conduct in 1982. As disabled individuals enter the civil rights movement, which to a large extent has depended upon statistics to prove discrimination and fashion remedies, it becomes increasingly important that handicap statistics be comprehensive and indisputably valid.

I would like to describe briefly some of EEOC's activities since acquiring jurisdiction over equal employment opportunity for handicapped individuals in the Federal sector. Because our mandate was new, our instructions were late. As a result of the reorganization I have described, EEOC turned its attention to Federal agencies for the first time, not only with respect to handicapped individuals but also with respect to minorities and women. Instructions issued December 6, 1979, required agencies to submit the first elements of their affirmative action program plans by February 1, 1980. Of approximately 102 agencies covered by the instructions, 52 had submitted some sort of

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plan for handicapped individuals as of yesterday. Of these, 33 complied with our instructions. This constitutes approximately a one-in-three rate of satisfactory response.

We are well impressed with the manner in which the 33 agencies in full compliance are attempting to conduct their affirmative action programs. The goals they have set are good. We are asking, however, why it takes 2 months to get one-third of the Federal Government to respond to instructions. To find out, we are talking with responsible officials. I should point out that a large part of what we are trying to do this year is to establish working relationships with agencies. We feel it would be counterproductive to take a hard-line approach. Instead of castigating agencies for their failures, we are working with agencies to help them develop approvable affirmative action programs.

A major problem already has been identified by at least three speakers this morning. This problem is lack of resources. Many agencies have told us they do not have enough people or money to implement affirmative action programs for handicapped individuals and also fulfill the other equal employment opportunity mandates they have. It has become very clear that the resources issue must be addressed and dealt with effectively.

Another problem is the transition period that is inevitable when agencies reorganize affirmative action programs. Some agencies are converting the traditional selective placement programs in personnel offices to less conventional affirmative action programs in equal employment opportunity (EEO) offices. There is a certain amount of indecision as to who should be responsible for what. Some agencies have given the EEO office lead responsibility; others have given the personnel office lead responsibility. Some have placed all responsibilities in one office or the other; others have divided the responsibilities in various ways. The trend government wide is toward reorganization, and transitional uncertainties have caused delays in program planning and implementation.

Furthermore, to be frank about it, there has been some resistance to the idea of bringing disabled people into the civil rights movement. Some of the resistance has come from persons who traditionally have dealt with employment of handicapped individuals and do not wish to give up turf. Some of the resistance has come from persons who traditionally have been involved in the EEO movement and feel there will not be enough pie to go around if it has to be shared with disabled people.

A few agency officials have been candid enough to ask who is to be given priority in affirmative action programs. On that topic, I would like to share with you a statement by Eleanor Holmes Norton, Chair of

EEOC, at the meeting of the President's Committee on Employment of the Handicapped in May of 1979.

Chair Norton knew that competition among the protected classes was a matter of pressing concern to many people. She began by talking about the striking similarities between disabled persons and members of other groups placed at a disadvantage in our society. She then issued a call for unity:

> This essential unity among the protected classes is both a practical and a moral imperative. It is a moral imperative because any decent system of values knows no priorities among people deprived of their essential humanity. The only way to approach the eradication of the evil of discrimination is to face the high truth that we are all equal—black and brown, female and disabled. If that equality is not attained internally among us, the essential lesson of equality we are trying to impart to the rest of society will be lost.

Chair Norton emphasized that employers apparently understand very well that dividing the protected classes would be advantageous to those who oppose affirmative action. She said:

> A recent widely publicized suit filed by a large retailer complains, among other things, that the Federal equal employment effort has failed to indicate which among the protected groups is the priority for enforcement. The question seems as absurd as any conceivable answer. Who shall it be? Are blacks the priority, or perhaps women, or Hispanics? Are handicapped people the priority, or perhaps Jews, or older workers? The question defied belief, and especially so in a country that historically has experienced the most extraordinary job expansion that continues unabated to this very day.
>
> Let me declare here and now the answer to that question. The law of discrimination knows no priorities among the protected classes and never shall. America has shown a remarkable capacity to provide work for its people. The problem has been less the number of jobs than the distribution of those jobs. There is no reason why the burden of joblessness and discrimination should be born by those workers who are older, female, brown, black, or disabled. The capacity to work hard and well is not denied a person because of a disability or sex, race or religion, age or national origin. Together we must make America understand that.

There can be no doubt that Chair Norton and EEOC favor and support full protection of the employment rights of handicapped individuals. To an extent, what we have at this time is annexation of equal employment opportunity for handicapped individuals in the civil rights movement without adequate authority to enforce the rights that have been conferred by implication. EEOC has broad authority to secure the rights of minorities and women in the private sector as well as the Federal sector, but EEOC's authority with respect to handicapped individuals is limited—in a sense, tacked on. EEOC enforces section 501 of the Rehabilitation Act of 1973, as amended, which requires affirmative action for handicapped individuals in the Federal sector. However, handicapped individuals are not covered by the Civil Rights Act. When that act was passed in 1964, it covered only minorities; amendments in 1972 extended coverage to women.

People are used to discussing equal employment opportunity and affirmative action in terms of the Civil Rights Act, and this is one of the reasons we sometimes hear agency officials talk about programs for minorities and women without mentioning handicapped individuals. It was not so many years ago that they sometimes forgot women, and it may not be too many years from now that persons with disabilities are discussed—and included—consistently.

Thank you.

COMMISSIONER SALTZMAN. Thank you.

John McNeil is Chief of the Consumer Expenditures and Wealth Statistics Division of the Bureau of the Census. He is currently developing a new survey of income and program participation relating to disability. His recent projects include the development and testing of a disability item in the 1980 census and the development of the proposed postcensus disability survey.

Mr. McNeil.

## STATEMENT OF JOHN McNEIL, CHIEF, CONSUMER EXPENDITURES AND WEALTH STATISTICS DIVISION, BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE

MR. MCNEIL. Thank you.

As has been indicated, household surveys have a unique role to play in providing information about the number of persons who are disabled and their economic and social situation. There are other important sources of information, such as program statistics or employer records, but surveys are our only possibility of learning about the characteristics of the entire population.

There has been a considerable amount of activity in the area of disability surveys during the past 15 years. The most comprehensive surveys relating to work disability have been those sponsored by the Social Security Administration. They conducted very detailed surveys in 1966, 1972, and most recently in 1978. These surveys asked an extended set of questions on the presence of work limitations and they also asked about the ability to do certain physical tasks. They had questions on the need for special aids, on the characteristics of present and previous jobs, on the receipt of and interest in receiving rehabilitation services, and on financial characteristics. Disability questions have also appeared in a number of multipurpose surveys, including the 1967 survey of economic opportunity, the 1976 survey of income and education, and the 1970 and 1980 censuses of the population.

The work disability questions which were asked in the 1970 and 1980 censuses were very brief: Basically, "Is this person limited in the kind or amount of work he or she can do?" And, "If yes, is this person prevented from working?" The 1967 survey of economic opportunity and the 1976 survey of income and education asked similar but somewhat more detailed questions.

Although it is recognized that a household survey is the only means of estimating the prevalence of disability within a population, survey designers and data users must be concerned about the validity and reliability of the data. Do the questions about limitations and the kind or amount of work a person can do successfully identify the population in which we have an interest?

Leslie Milk has mentioned one group who may fail to respond properly to such questions. That would be those persons who fail to report themselves as work disabled because of the stigma attached to such status. She has also suggested that some persons with a particular health history may quite properly answer "no" to the work limitation question, but, because of employer bias, be subjected to restricted job opportunities.

We also know that some persons may have limitations in one or more major life activities, but because of the nature of the job they hold, or accommodations to that job, may not perceive themselves as being work disabled. A fourth possible problem is that some people have never worked, and when we ask the question on work limitations, they answer "no" because they have never considered themselves as potential workers.

One method of examining the validity of survey data on the work disabled is to compare the status of the disabled with the nondisabled. I would like here to refer to certain data from the 1976 survey of income and education, the most recent published source of data. According to that survey, 16.4 million persons between the ages of 18 and 64 had a work disability. Of these 16.4 million, 7.1 million were prevented from working and another 2.1 million said they were unable to work regularly.

Work disability had a very strong impact on labor force participation and earnings, and there was a strong negative relationship between work disability and years of school completed. Only 47 percent of work-disabled persons had completed high school, compared to 76 percent of those without a work disability.

The presence of a work disability affects earnings through three separate paths. First, it reduces weeks and hours that a person is likely to work. Second, even for those persons who put in the same number of weeks and hours, work-disabled persons have less schooling, and less schooling is associated with lower earnings. Finally, even among those persons with the same education and the same number of weeks and hours worked, work-disabled persons have lower earnings than persons without work disabilities.

As an example of the extent to which a work disability reduces the earnings of males 18 to 64, we can again refer to the 1976 survey. That survey showed that only 65 percent of work-disabled males had earnings in 1975 and only 34 percent worked year round full time. The comparable figures for nondisabled males were 95 percent and 64 percent.

Among males who had earnings in 1975, those who were work disabled had average earnings that were only 51 percent of the earnings of the nondisabled. Among full-time workers, those with the work disability earned about 20 percent less than those without a work disability. Even among full-time workers with a college degree, work-disabled males earned about 10 percent less than those without a work disability.

There are other ways of evaluating the quality of survey data on disability status. One method is to go back to respondents a short time after an interview and ask them the same or a similar set of questions. The degree of consistency between the original interview and the reinterview measures the reliability of the data. The work that has been done in this area suggests that the reliability of survey data on the disabled depends importantly on the design of the survey and the questionnaire.

In the 1976 national content test for the 1980 census, we tested an expanded disability item that asked about disability status in several areas, including using public transportation, climbing stairs, bathing or dressing, doing regular schoolwork, working at a job, doing housework, and driving a car. A subsample of those households was then reinterviewed. When the original and reinterview responses were compared, a distressing amount of inconsistency was found. For example, of the 455 persons who reported a work disability in the original interview, only 298 reported a work disability in the reinterview. And the activity of working was the most reliable of the activities asked about. One of the conclusions from that national content test was that the disability item that was tested was too complicated and, as a result, we adopted a shortened and simplified disability item for the 1980 census.

More recently, in January and February, we conducted a pretest of the proposed postcensus disability survey. (There has already been a reference to this survey.) It differs from earlier efforts primarily in its projected sample size, large enough to provide State data, in its coverage of persons 65 and over, and perhaps most importantly in its attempt to collect detailed information on the characteristics of persons who report a limitation in any one of a number of areas, including the ability to perform certain physical tasks, the ability to get around inside and outside the home, the ability to care for oneself, the ability to see and hear, the ability to do work and housework, and the ability to use public transportation.

The plans for this survey were developed on the basis of recommendations of the Disability and Health Committee of the Federal Agency Council on the 1980 Census. The Office of Federal Statistical Policy and Standards is currently coordinating an effort to secure funding for this survey.

One of our early findings from the pretest is that there was a very good agreement between the original interview and the reinterview. Of the 82 persons reporting a work disability in the original interview, 77 reported a work disability in the reinterview. A reasonable conclusion, I believe, is that surveys which are designed to focus on the subject of disability can produce accurate and reliable information on the disability status of the population.

Thank you.

[See also Exhibit No. 5, supplemental statement by John McNeil.]

COMMISSIONER SALTZMAN. Thank you, Mr. McNeil.

Commissioner-Designate Ramirez?

COMMISSIONER-DESIGNATE RAMIREZ. Thank you, Mr. Saltzman.

I have first just a few questions for Mr. Hogan and then I have one question for Mr. Bennett.

As I understand it, your office will be doing 7,000 to 8,000 reviews of entities that have contracts with the Federal Government and you will be looking for compliance with issues relative to the disabled person as well as to minorities and women. Is that correct?

MR. HOGAN. Yes, that is correct.

COMMISSIONER-DESIGNATE RAMIREZ. Now, of those—have you already done reviews?

MR. HOGAN. Yes. Since the program was consolidated in 1978 we commenced—we put together the requirements for the handicapped, for certain categories of veterans, for minorities and women, and attempted to look at all of them in all our reviews. We did, I think, about 3,000 in the immediate past fiscal year, combined reviews.

COMMISSIONER-DESIGNATE RAMIREZ. Of those 3,000, do you know how many were public sector contractors for the Federal Government; that is, State agencies or local government agencies? We have been told that public sector employment is important to the disabled. Can you tell me?

MR. HOGAN. Very, very few, almost none. We are rather limited in our jurisdiction over public sector employers.

Typically, it is the flow of Federal funds into the private economy that we are permitted to pursue.

COMMISSIONER-DESIGNATE RAMIREZ. When you go in to do a review and assuming that you find most contractors wanting in some areas, what do you do?

MR. HOGAN. We are required first to attempt to negotiate and conciliate to arrive at a proper solution to whatever problems, be they failures to take affirmative action for minorities, for women, for the handicapped, disabled veterans, etc. In many cases, in the large majority of cases, it is possible to bring the contractor to a willingness to make an enforceable commitment to make the necessary changes.

COMMISSIONER-DESIGNATE RAMIREZ. And then who goes back to check and to enforce that plan, let's say?

MR. HOGAN. Well, these commitments are obtained in writing. Depending on the nature of the commitment, depending on the apparent likelihood of the contractor to faithfully pursue those, we quite often will require reporting—monthly, quarterly, semiannually, depending on the nature of the commitment. If the reporting indicates progress, nothing may need to be done further until the next review of that establishment.

COMMISSIONER-DESIGNATE RAMIREZ. What happens when there isn't progress?

MR. HOGAN. When there isn't progress, the employer would be liable to our filing an administrative complaint commencing in an enforcement hearing which would lead to debarment from all Federal contracting.

COMMISSIONER-DESIGNATE RAMIREZ. I appreciate that this is a new effort, but has anybody ever been debarred?

MR. HOGAN. There have been quite a number of debarments over the years of the program. Until now they have all resulted from failures to carry out affirmative action or from discrimination against minorities and women.

There are in excess of 20 administrative complaints based on failure to take affirmative action or discrimination against the handicapped at the present time. The process for conducting these hearings and arriving at final debarment or the final result has been a rather lengthy process. None of them has come out the other end of the machine as yet.

**Commissioner-Designate Ramirez.** How long does it take, Mr. Hogan?

**Mr. Hogan.** It has taken anywhere from, I'd say, 9 to maybe 18 months to complete the entire process arriving at a debarment. We have published, for comment, enforcement proceedings, expedited enforcement proceedings, which we feel can be used for very clear-cut cases where there is not a tremendous amount of evidence and proof and dispute on facts where we could conclude and arrive at a debarment within as little as less than 2 months.

**Commissioner-Designate Ramirez.** Just one more question so that I can have a clear picture in my mind. Of those 20 administrative proceedings, were they actions that were taken as the result of some complaint external to the reviews done by your agency, or did they result from reviews done by your agency?

**Mr. Hogan.** I don't have the exact number of each type. I know that the 20 includes both situations resulting from individual complaints of discrimination by handicapped persons and some resulted from serious problems identified in the course of review. But, I am sorry, I don't have the exact breakdown between those two.

**Commissioner-Designate Ramirez.** Thank you very much. You have given me a better sense of understanding.

Mr. Bennett, I happen to have been at HEW when you were getting the regulations out and I was very much aware and pleased, I might say, by the input that you had from the disabled community.

You had recommended that the regulations get out, that resources be assigned, and that a vigorous effort in enforcement in training and technical assistance be implemented. What role do you see for an advisory group kind of activity as agencies carry out your recommendations?

**Mr. Bennett.** Public advisory group or an agency advisory group?

**Commissioner-Designate Ramirez.** An advisory group to the agencies on an agency-by-agency basis.

**Mr. Bennett.** Certainly, formalizing the input that the agencies get from disabled groups is important. It is also true, I'm afraid, that setting up advisory groups and managing them takes significant resources and a lot of time from the agency, so to be perfectly honest I think it is a trade-off, given the scarcity of resources, whether you want to commit it in that way when you can achieve a similar result through a variety of less formal mechanisms, simply instructing the staff to develop relations with the community, as was done fairly well at HEW, as you point out. It is a lot simpler and it doesn't require a large commitment of resources.

We looked into establishing a formal advisory group at the Office for Civil Rights in HEW at one time and found out that it would cost us something like three staff persons at least and that there are many complicated regulations to which you must adhere in order to get such a thing underway. It would take about a year just to have the first meeting.

**COMMISSIONER-DESIGNATE RAMIREZ.** Thank you. I sympathize with the fact that it takes three people just to get the charter for the advisory group. Thank you very much.

**COMMISSIONER SALTZMAN.** Dr. Flemming?

**CHAIRMAN FLEMMING.** Ms. Milk, first of all, I want to express appreciation for the overview that you provided us. I agree with Commissioner Saltzman that it was both informative and inspiring.

I think I have down here your summary of your point of view on a couple of issues in which I am interested. You do believe that the Civil Rights Act of 1964 should be amended to include the handicapped. You feel that we could move forward much more effectively if that action were taken, and you also believe that there should be legislative action that would ensure private right of action. Am I correct?

**MS. MILK.** Absolutely. We have a number of cases dealing with private right that have come down on both sides of the issue. In fact, in 504 we have the *Camenisch* case in Texas where it was understood by the court that if the person waited until he exhausted his administrative remedy through HEW he would have lost his job a long time before HEW ever acted.

In dealing with 503, OFCCP recently filed an *amicus* brief in a case in New York stating that, considering their resources, they couldn't possibly provide administrative relief in any timely fashion, or perhaps in any fashion at all.

In addition to that, there a couple of other considerations. One is certainly the fact that the disabled person is no party to an administrative process. In fact, this is purely a contractual discussion between the government and those people to whom it issues grants or funds. It is very humiliating, in effect, to have been acted upon and that your only remedy, according to the opinion in the case that went against private right, was to push for better administrative action by the government.

In addition, it forces administrative agencies into the problems that EEOC has had in the past. They must investigate every single case to the fullest, knowing that in fact the administrative agency is the court of last resort.

We are very much limited in our ability to develop case law and precedent without being able to go to court. So, therefore, we are in a situation whereby the remedy is limited, the resources of those people who are the only people who can afford the remedy are limited, and, therefore, the rights to justice are limited.

I also think that there is a very important moral question here about whether or not somebody is in fact handicapped in law if they can never go to court for themselves.

So, for this reason, I believe that it is very important that we deal legislatively rather than administratively in order to increase disabled rights.

**Chairman Flemming.** Thank you very much.

Mr. Bennett, what is the status of your office now as a result of the creation of the Department of Education? Is your office still in the Department of Health and Human Services?

**Mr. Bennett.** Well, confused would be the quick answer. The real answer, though, is that both the Education Department and the Health and Human Services Department now have offices for civil rights. They both have section 504 responsibilities. I am in HHS.

**Chairman Flemming.** I see. But they both have 504 responsibilities?

**Mr. Bennett.** Yes, sir.

**Chairman Flemming.** Both offices.

**Mr. Bennett.** Yes.

**Chairman Flemming.** And then, as I gather, in addition to that, the Department of Justice has now been given some additional coordinating responsibility as far as 504 is concerned.

**Mr. Bennett.** The Executive Order 11914 gave HEW the coordinating authority. That Executive order technically is still in effect. The decision, however, has been made to move it to Justice and another Executive order superseding that one will be sought.

**Chairman Flemming.** In fact, it hasn't been moved yet, but it is about to be moved. Is that it?

**Mr. Bennett.** Yes.

**Chairman Flemming.** You referred to the 29 departments and agencies that have an obligation to issue regulations. How many of the 29 have actually promulgated regulations up to the present time?

**Mr. Bennett.** I don't keep a day-to-day tally on this, but it is in the neighborhood of five.

**Chairman Flemming.** Five out of the 29.

**Mr. Bennett.** Final regulations, yes.

**Chairman Flemming.** Could you supply for the record first the 29 and then second the 5 that have——

**Mr. Bennett.** We can give you a full status report.

[See Exhibit No. 2.]

**Chairman Flemming.** Are they required, as they submit the regulations, to file with you also what you referred to as enforcement strategy, or is that something that is separate and apart from the regulations?

**Mr. Bennett.** It is really separate. The Executive order doesn't address, or the old one, 11914, didn't address the enforcement problem specifically.

To answer your first question, no, they do not typically submit an enforcement plan to us for review when they submit their regulations for review.

**Chairman Flemming.** So if that responsibility rests anyplace now, it would be in the Department of Justice under the Executive order that is about to be issued. Is that correct?

**Mr. Bennett.** It could very well be if they write the Executive order that way.

**Chairman Flemming.** But you don't know whether they are going to write it—you haven't seen a draft of the order.

**Mr. Bennett.** No, I understand Justice is working on it.

**Chairman Flemming.** I have a request, that the Staff Director make sure that we get a copy of that Executive order as soon as it is issued, because that is a new coordinating responsibility that I wasn't aware of when we were discussing the matter with the Assistant Attorney General.

Coming over to Federal contract compliance, I think I am clear that whether you are operating under 11246 or 503 now, or primarily because you are operating under 503, as you look at affirmative action plans you do expect to find in those affirmative action plans goals, timetables, and action plans for achieving those goals and timetables in the handicapped area as well as in the area of discrimination on the basis of race and sex. Is that correct?

**Mr. Hogan.** Yes. The Department of Labor regulations implementing section 503 specifically call for maintaining an affirmative action program in response to 503. Companies are permitted to integrate that plan and those commitments with the more familiar Executive order plan. However, there is to be a separate plan including separate specific commitments for the handicapped.

**Chairman Flemming.** What experience are your people who are conducting these reviews having with employers in relation to the requirement that they have an affirmative action plan with goals and timetables for the handicapped?

**Mr. Hogan.** Perhaps I had better pause and make one thing a little more clear, and that is the term goals and timetables.

Goals and timetables, in the sense that we are familiar with them for minorities and women—very specific numerical goals to be achieved within each annual period—are not yet included in the handicapped program. That relates somewhat to the information we had about availability figures. In order to set and enforce numerical levels of achievement, it is going to be necessary to develop some pretty reliable availability data that that can be based on and we can hold contractors to.

Commitments, however, in terms of such things as inviting all employees to identify themselves as handicapped and to take advantage of the affirmative action requirements—that is part of what has to be included in the plan, the review of all qualifications that might tend to be screening out certain handicapped persons from jobs. That review and a record of the review and the results of the review, the changes resulting from it, is part of the plan. It is quite a series of specific affirmative actions that must be taken, but I wanted it to be clear that it does stop short of specific numerical goals for employing any particular number of handicapped persons.

CHAIRMAN FLEMMING. I am very much interested in that. What are your plans for having the program evolve to the point where the employer is required to set goals and timetables in this area just as the employer is required to set goals and timetables in the area of discrimination on the basis of race and sex?

MR. HOGAN. Our experience has been that to be able to impose and enforce numerical goals for minorities and women has been immensely helpful, has been really quite successful. For that reason and with that experience, we would very much favor being able to impose numerical goals and timetables, or to work with contractors to develop goals and timetables, and we are actively investigating what we would need in the way of availability data, be it census data, Bureau of Labor Statistics, etc., and the legal ramifications of attempting to enforce and have those goals hold up when challenged. So we are in favor of it. We are working on it. We don't have it yet.

CHAIRMAN FLEMMING. Do you have any feel as to the time period that is involved here in thinking through the problems that are connected with establishing or requiring the establishment of goals and timetables in the handicapped area? Is this something that we can expect in 3 months, 6 months, 9 months, a year, what?

MR. HOGAN. I would think we would have pretty well identified what the problems are and determined whether and how they can be overcome, certainly during this calendar year. There is active work underway by our staff on that problem.

CHAIRMAN FLEMMING. You mentioned legal aspects of it. Do you foresee or do some of your associates foresee legal problems in this particular area?

MR. HOGAN. Well, I wouldn't say that there are specific problems already identified. What I was trying to suggest is that the various types of goals and timetables that have been required—for instance, in the construction area—have been very specifically challenged and, fortunately, it went to the Supreme Court who ruled in our favor in the Philadelphia case for construction.

I guess what I am saying is that we were able to show in that case that the statistics supporting the numerical goals for minority construction workers were, while not 100 percent certain, were pretty solid. They did relate to the number of minorities who were available for construction work in the Philadelphia area and it was, therefore, reasonable to expect contractors to meet these goals.

We will have to have data and statistics sufficiently reliable so that when we insist that contractors set and meet such goals, that they will hold up, and the courts will find that to have been a reasonable requirement, reasonably obtainable through the exercise of good faith effort. That is really all I was saying.

I think it goes back again to the double problem of the definition of the various types of handicaps and the availability of data relating to the number of persons having those handicaps.

CHAIRMAN FLEMMING. All right.

Mr. Boyd, I would really like to have your comments on goals, timetables as part of affirmative action plans, looking at it from the point of view of EEOC. I notice that apparently you have done some work. You used a figure of 5.9 percent—I put down here 6 percent—of the work force have disabilities. You apparently have been doing some work designed to lay the groundwork for affirmative action plans. Where does EEOC stand on this at the moment?

MR. BOYD. It is important to look closely at the reasons we decided to require goals and timetables. As we evaluated the progress that has been made in affirmative action programs since 1973, we noted that architectural barriers were being removed, medical qualification standards were being revised, and preemployment testing methods were being changed. But the bottom line remained unsatisfactory. The total number of handicapped individuals in the Federal work force was steadily decreasing although, in some instances, the numbers did increase in certain disability categories.

We concluded that even though agencies were trying hard to smooth the way for handicapped individuals, agencies were not making much of an effort to recruit and hire qualified persons with disabilities. It was to reverse this trend that we instituted the requirement that agencies establish goals and timetables for hiring persons with specified severe disabilities. We are reasserting the obvious: The purpose of affirmative action for handicapped individuals is to increase representation of handicapped individuals in the work force. If this is not done, affirmative action fails.

To gauge underrepresentation and set reasonable goals, agencies need a statistical reference point. On the basis of data from the 1970

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census and several other sources, we determined that approximately 5.95 percent of persons in this country who are work force age and able to work have one of the severe disabilities we targeted for special emphasis in FY 1980 affirmative action programs. By contrast, as of December 31, 1978, persons with these disabilities constituted only 0.79 percent of the Federal work force.

We developed the targeted disability concept in order to deal with definitional problems that were preventing any kind of quantitative approach to affirmative action for handicapped individuals. The definition provided by the Rehabilitation Act is all inclusive, which is fine for the purpose of protecting people from discrimination. However, the legitimacy of affirmative action is questionable when the beneficiaries include, for example, persons who are believed to be, but are not, disabled or persons who once were, but are no longer, disabled. Both of these types of individuals are covered by the statutory definition.

To focus affirmative action on persons with severe disabilities and to make it possible to hold agencies accountable, we chose nine disabilities that traditionally have caused persons to be excluded from the work force and that can be identified relatively easily for recruitment purposes. Persons with other disabilities still are eligible for affirmative action and still are covered by nondiscrimination provisions; however, goals and timetables are required only for persons with the severe disabilities in the target group.

By limiting the statistical universe in this way, we were able to come up with a defensible statistical reference point. We don't say the figure is precise. We do say it is useful. Virtually nowhere in the Federal work force is the representation of persons with targeted disabilities anywhere near 5.95 percent. Yet, beyond reasonable doubt, at least 5.95 percent of persons able to work and the right age to work have these disabilities and, in theory at least, could be hired by Federal agencies.

**CHAIRMAN FLEMMING.** I noted that you said about a third of the agencies responded with affirmative action plans, including goals and timetables. To the extent that you have had the opportunity of analyzing them and evaluating them, do you have the feeling that those that have put their minds to it have done a pretty good job of establishing specific goals and timetables?

**MR. BOYD.** The goals that have been set are impressive. We need to remember what our starting point really is. As of December 31, 1978, only 0.79 percent of Federal employees had any of the disabilities we are now targeting. Even if you are unwilling to accept the validity of the 5.95 percent figure for representation in the civilian labor force, representation in the Federal work force is so far below that level that agencies have a long way to go before they can even consider arguing that they cannot set or meet goals because not enough qualified applicants are available. I am happy to report that agencies have accepted the challenge and are making very aggressive efforts to recruit and hire handicapped individuals.

**CHAIRMAN FLEMMING.** Well, of course, I react very positively to your having looked at the bottom line, having noted that there wasn't much progress, and deciding that the only way to try to get at that and to correct it is through an affirmative action plan.

Also, I might say that I appreciate very much your making a part of the record of this hearing the comments of Mrs. Norton relative to no priorities among protected classes. It seems to me that was a very good statement.

Mr. McNeil, I was very much interested in your analysis of where we are on pulling statistics together. I was particularly interested in the information that you had on schooling or lack of schooling within the handicapped population. It seems to me that that is an area to which we should direct a great deal of attention because, obviously, unless we get at that, why, we are going to have continuing problems in the employment area. It seems to me that was very relevant to the area that we are emphasizing here in this consultation, namely, the employment area.

**VICE CHAIRMAN HORN.** Perhaps this came up while I was out of the room, but I am curious if either EEOC or OFCCP filed comments on Senator Williams of New Jersey's bill, S. 446, which would broaden the categories under Title VII in terms of the handicapped. Are you familiar with that? Assistant Attorney General Days mentioned that this morning.

**MR. BOYD.** EEOC did file comments on S. 446.

**VICE CHAIRMAN HORN.** What is the nature of those comments?

**MR. BOYD.** EEOC favored strengthening the civil rights of handicapped individuals.

**VICE CHAIRMAN HORN.** Basically supports the legislation, or do you have some reservations?

**MR. BOYD.** EEOC expressed no reservations in regard to the civil rights of handicapped individuals. However, there was no specific endorsement of S. 446 as written. A matter of concern was that the bill did not address reasonable accommodation. Daniel Leach, the Vice Chairman of EEOC, made a very strong statement in support of civil rights legislation that would do a better job of protecting the rights of handicapped individuals.

**VICE CHAIRMAN HORN.** OFCCP?

**MR. HOGAN.** I don't recognize the bill number. Was that a bill that would have amended Title VII?

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Vice Chairman Horn. That is correct.

Mr. Hogan. I know that OFCCP and the Department of Labor took a position in support of that. Frankly, I am not familiar in sufficient detail with our position to know if there are any reservations. I think not. I know that we were generally supportive of that.

Vice Chairman Horn. I am just curious generally. Perhaps, Ms. Milk, is there a fear in the handicapped community of opening up Title VII or a fear on the part of the governmental community of that and what that means? We have gone through this with the Commission before when we opened up the Civil Rights Act of 1964.

Ms. Milk. I think there was a fear in Congress among supporters of all rights under Title VII that, certainly, unless very clear understandings were made before that could be considered by the full Congress, that nongermane amendments would be introduced. It may be essential that rather than amending Title VII, that we find some other legislative vehicle for accomplishing the same aims, because there was no clear understanding that nongermane amendments would not be raised if in fact Title VII was opened.

Certainly, it was not my understanding that disabled people wanted to infringe upon anybody's rights already established in an effort to improve the legislative picture for handicapped people. Our first choice was amending Title VII for the fact that this is the Civil Rights Act, and that alone has certain symbolic value. But I understand there were problems in Congress. There was a feeling that certain Senators or Congressmen would just love to get their hands on Title VII.

Vice Chairman Horn. So then the question is, and I take it that is what we have mostly been exploring, is if you really cannot open up Title VII for the fear of all these other amendments that have nothing to do with the handicapped being brought in to possibly cripple other portions of Title VII, what is it the executive branch can do to assure enforcement in this area without having to change the law? Do you feel this has been sufficiently explored from your standpoint?

Ms. Milk. No. I don't think that in terms of cleaning up, if you will, certain provisions of the Rehabilitation Act, that we have really explored that as a possibility if in fact Title VII cannot be amended.

Title VII deals with some of the things which would make it easy, but the Rehabilitation Act amendments—95-602, for example—grant attorneys' fees, but don't clearly say you have a right to hire a lawyer and go to court.

One section, in trying to provide that right to go to court, was tied to Title VI and, therefore, we ended up with the *Trageser* decision which, if anything, took away protection for employment rights under section 504 where they existed previously.

We can cite endlessly a very, very heartening debate between Senator Bayh and Senator Cranston in discussing the Rehabilitation Act Amendments when they said, "Does this provide the right to go to court?"

"Yes, it does."

But I think courts are increasingly saying to us, "It doesn't matter what they said on the floor; what matters is what they said in the law." And until they say it very clearly in the law, we are going to have these problems.

I think it matters less to disabled people, frankly, how we do it than the fact that legislatively we clear up some of these problems.

VICE CHAIRMAN HORN. It is an interesting observation. I suspect it depends on what court you are talking about, because some courts also say, "It doesn't matter what they didn't say on the floor; we will interpret what they might have said if they had thought about it."

COMMISSIONER SALTZMAN. Mrs. Ruckelshaus.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Did I make this up or did you say that 95 percent of the handicapped hired by the government didn't need any kind of accommodation made in their work?

MS. MILK. That was a study done by the Office of Selective Placement. That is true. Again, I think we constantly look at this in terms of technology and in terms of what you would need to do the job if you were disabled, as opposed to how handicapped people have managed to accommodate themselves without needing any kind of formal accommodation.

For myself, I only have limited use of one arm, and as a journalist they were afraid to let me graduate because they said, "My God, she'll never be able to type." In fact, I type very well in the tradition of all journalists. It is not really in journalist tradition to be able to type perfectly well with 10 fingers, but I type very well with one hand and I do not have what is now available on the market, which is a one-handed typewriter. Perhaps I would have if I were starting out now, but I never thought about it and I do perfectly fine without one.

I think a lot of the time that it is more a question of accommodation in the sense of letting somebody do a job the way they want to, the way they are capable, even if it isn't the way anybody else has previously done it, and even if it makes you personally uncomfortable to watch, and that is part of the problem that we end up with. Though in some cases accommodation is necessary, in many it has not been required at all.

COMMISSIONER-DESIGNATE RUCKELSHAUS. You wouldn't have any kind of figure like that for the private sector employment.

Ms. MILK. I don't think so. For one thing, handicapped people have been hesitant to ask for accommodation. Before the 1973 act, and I think even after it, the idea is if you have to ask for something, you become a less desirable employee. So, therefore, a lot of times there are ways to make life easier for handicapped people, but they in fact never ask for it.

So it is difficult to tell. We always hear the stories of the very expensive accommodations. Again, we never know who designed them. The first story to come out concerning the Rehabilitation Act, section 503, was the story of a bank in Chicago which had installed what they called a wheelchair door for $35,000. In fact, we discovered that it was two bronze doors with electric eyes and several modifications to the lobby of the bank which had a lot more to do with how the bank thought a bank ought to look than how you need to get through a door for a handicapped person. So I think it is very hard to talk about cost without saying, "Who designed it? Who needed it? And did they just feel like doing it that way?"

COMMISSIONER-DESIGNATE RUCKELSHAUS. I think that statistic is very interesting and probably a good one to get around a little, because it demonstrates exactly what your point was in your testimony, that it isn't necessary to make a big deal out of accommodation. It is necessary to be flexible and sensitive, but it isn't necessary to have a big testing public relations program.

Ms. MILK. Sensitivity may be the greatest accommodation of all.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Do you have any experience that would indicate that a government agency or a private sector corporation that has hired handicapped people continues to hire because it is a positive experience for them?

Ms. MILK. I don't know if it is a positive experience or being a Federal contractor is a positive experience; therefore, they continue to do it for that reason.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, because that initial stereotype is defeated, that something unusual is needed to hire handicapped.

Ms. MILK. Those are the kinds of things, frankly, we very rarely hear about. We only hear about it when it doesn't work. But I can give you one example, and that was of an engine company that, on the assembly line, in order to do what they call work enhancement, had created a program where everybody not only operated one little section of a machine, but they operated a whole operation and they tested the machine themselves. Therefore, it was decided that since you have to test the machine visually, nobody blind could ever do the job. Somebody decided to try it and they in fact invented a device so that you can test your machine by sound, and now everybody on the line uses that device. They found it worked better. Now they can't get anybody to test their machine by sight.

So we occasionally get into circumstances like that. It is unusual to hear about those. Those are the kinds of accommodations where people say, "But that guy was extraordinary. He was a superstar. That isn't true of all those other sick people who we couldn't possibly accommodate." So it is hard to put your finger on what works.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Do you find that the category of learning disabled is customarily included in the stereotype of handicapped? And are you aware of any examples in which sensitivity to learning disabled is used in preemployment testing?

Ms. MILK. I am sorry to say that I don't know about any good cases. I do know that advocates for learning disability have had to fight just to get included in the definition to make them available for rehabilitation. Only a month ago, I attended a meeting with the Commissioner of RSA. For the first time they were trying to make clear to those people in States who fund rehabilitation that these people are covered under the definition. So this makes it very difficult.

In addition, it is difficult because it is a hidden disability. It is very, very misunderstood. Let me give you an example. People who are blind can almost routinely use tape recorders. People who have a learning disability that makes it difficult for them to write have a much harder time getting permission to use tape recorders to transmit information for themselves because they say, "You're not blind. You can see. We don't understand why you can't do it that way." It is more because of a tremendous lack of understanding. This hasn't even gotten through to those people who teach learning-disabled children. They still call them the puzzle children.

So I think for employers this is an incredible problem. We got a call on our hotline one day about an employee and they tell me—this is the personnel director from the corporate office—about a facility problem. "We have a terrible time with this person. He has dyslexia." I say, "Yes, what's the problem?" "The person can never catch a plane. It's because he has dyslexia." I say, "I understand what dyslexia is. I don't understand what that has to do with catching planes."

Well, the person had done enormous research, but obviously still believed that dyslexia was such an awe-inspiring disability that if the person never caught a plane, refused to wear business suits, and preferred a knapsack to a briefcase, none of which we were able to assure them had anything to do with dyslexia—but the word alone was so difficult to spell, that they were so spellbound over that alone, that they never even did normal personnel processing. If a person can't carry a briefcase, is that job required? And if it is, then why don't you sit down and talk to that person about it? So in the case of learning disability, we are still dealing with incredible myth and misunderstanding.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you very much. Mr. Hogan, what are the two greatest problems that your contractors cite in trying to meet the new affirmative action guidelines for hiring handicapped and promoting them?

MR. HOGAN. Well, one that is frequently heard—and I think Leslie Milk has accurately characterized it as something which, if not an absolute myth, is very much oversold—is questions of cost of accessibility and accommodation. I think it is largely a——

COMMISSIONER-DESIGNATE RUCKELSHAUS. Are these before-the-fact kind of objections?

MR. HOGAN. So I think cost is one of them. The other perhaps is a very firm holding on to concepts of maintaining very high medical standards. It is very much similar to requirements that many companies held with great pride some years ago that, "We only hire high school graduates"; totally nonjob related, came on with something of the flavor of corporate pride often found in sort of family-run companies. Here, there is a prejudice against the disabled that I think has to be overcome that we encounter quite frequently.

COMMISSIONER-DESIGNATE RUCKELSHAUS. That second objection seems clearly irrational, and the first one sounds as though it might be in light of what Ms. Milk—which is that there really doesn't have to be a substantive accommodation made most of the time.

Are those objections made before any kind of accommodation has been made or are they after? I wonder if your first objection is really demonstrable or whether it is a fear, too?

MR. HOGAN. It is very largely a myth that is usually encountered before the fact rather than being shown by a company that its efforts have been very expensive. Quite often, being at the state that we are in of companies just coming up to a level of awareness, our reviewers are finding companies rather unfamiliar with these requirements. The affirmative action program they have may have been rather recently pulled together and there isn't necessarily the degree of awareness and sensitivity that there must be.

So quite often they are talking about concern about accommodations that they might have to make when they begin more aggressively recruiting, when they begin including in their sources of employees organizations which could refer to them qualified handicapped persons. So some of their hesitation in getting aggressive about affirmative action for the handicapped relates to this whole realm of myth. So it is anticipated problems rather than experienced problems, and that is part of the message that our reviewers are asked to bring to companies. As our own reviewers get more experienced, they can begin to provide firsthand experience and anecdotes, as Leslie Milk can, on many of these areas, and that is quite persuasive sometimes.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Yes, I expect that is going to happen because I am sure you are seeing a lot of programs that were hastily pulled together and represent maybe an affirmative action program to come rather than in place.

MR. HOGAN. Yes. I am afraid that is the stage that we are at.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Okay.

COMMISSIONER SALTZMAN. I am going to ask you to——

COMMISSIONER-DESIGNATE RUCKELSHAUS. Wrap it up.

COMMISSIONER SALTZMAN. If you can ask quickly another question. We are falling way behind again.

COMMISSIONER-DESIGNATE RUCKELSHAUS. One question to Mr. Boyd. Did your questionnaire go to—where?—in the departments and agencies? To the EEO office in those departments?

MR. BOYD. Do you mean EEOC's affirmative action instructions to Federal agencies?

COMMISSIONER-DESIGNATE RUCKELSHAUS. The questionnaire that you sent out—didn't you send out a questionnaire? You have gotten a response, a one-third response?

MR. BOYD. It was not a questionnaire. We issued instructions to Federal agencies concerning submission of affirmative action program plans.

[See Exhibit No. 6.]

MR. BOYD. The rate of satisfactory response, as of yesterday, was one in three.

The instructions were sent to the head of each covered Federal agency, to the Director of Equal Employment Opportunity at agency headquarters, and to the Selective Placement Coordinator at agency headquarters.

[See Exhibit No. 7.]

MR. BOYD. We did this to be sure the instructions would reach the responsible officials, no matter how the agency had structured its program or what type of reorganization might be taking place.

The agencies that have not responded to our instructions are not ignoring us. They are working on their plans and attempting to solve related problems. We must bear in mind that EEOC is requiring Federal agencies to make extensive changes in all of their affirmative action programs, not only those for handicapped individuals but also those for minorities and women. Federal agencies are responding simultaneously to two sets of affirmative action instructions from EEOC: one set for handicapped individuals and one set for minorities and women. There is a lot of activity in both areas. Many agencies simply do not have the resources to address all of their equal employment opportunity mandates at once.

I want to emphasize that very few agencies have indicated unwillingness to cooperate. It is true that only one-third of the covered agencies have responded satisfactorily, even though the deadline passed 2 months ago; however, the agencies that are not in full compliance now are making every effort to comply and will, I believe, comply as soon as they can.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Okay.

COMMISSIONER SALTZMAN. Thank you. Dr. Berry?

COMMISSIONER-DESIGNATE BERRY. Yes. I have a number of questions and I will ask them as quickly as possible.

First of all, Ms. Milk, in your paper you say that sometimes people say they are protecting the handicapped when they are actually prejudiced against them. How do you tell the difference?

MS. MILK. I think it is very hard to tell the difference. One way is, without even considering it, they assume that somebody, based on his or her disability rather than his or her individual condition, could not do a job because they would constitute a hazard to themselves. That is the first thing. If you are in the interview, without even discussing job-related questions, they say, "We know that you as an epileptic cannot do this," that is one way.

COMMISSIONER-DESIGNATE BERRY. Second, on Title VII and the amendment issue. It seems like everytime someone suggests amending a civil rights statute to include some other group, there are objections about opening up the statute, whether it is Title IX on athletics or whether it is the Voting Rights Act and language-minority groups and the like. Instead of dismissing out of hand the notion of amending Title VII for fear of opening it up, why not form some kind of coalition with the groups that are already in it to try to make sure that they stay in it at the same time that the handicapped are included?

MS. MILK. That is what we are trying to do. There were several meetings last spring with the Leadership Conference on Civil Rights. I think the question is whether or not all protected groups are well enough represented in Congress right now so that they can be assured that the foes don't outnumber the friends of any kind of civil rights legislation, and that is something we all have to work on together.

COMMISSIONER-DESIGNATE BERRY. Third, on private action. Unlike other civil rights groups where there has been a lot of private action, but groups have complained about having to spend money or the time or asked why doesn't the government pay more attention to our issue, you, as some other witnesses we have heard, make a strong brief for more private action in 503 and the like. Is it because you expect the government to pay the lawyers who will be involved in the suits or because handicapped people have more money than other civil rights people?

Ms. Milk. I think it is because if there are attorneys' fees for prevailing parties, we hope the discriminators will have to pay the bills.

Commissioner-Designate Berry. Thank you. In your paper you make what I think is a complaint about the 1980 census. You say that the definitions are both too limited—you know the point that I am referring to?

Ms. Milk. Yes, I do.

Commissioner-Designate Berry. —and too broad to provide much usable data. My understanding is that Mr. McNeil had some responsibility for these definitions. Was the Census Bureau aware of complaints, at least of those who work with disabled people, about this problem?

Ms. Milk. That is why there is this development for the 1982 followup questionnaire because it was generally agreed, I think, that in the general census there is one question, I believe, or two questions the way Mr. McNeil described it, and there is no way we can get useful-enough data to make a case for worker availability numbers based on that. I believe Mr. McNeil's office agreed and that is why the 1982 questionnaire was designed.

Commissioner-Designate Berry. So you agreed, Mr. McNeil, that it was unsatisfactory.

Mr. McNeil. Well, I hate to use the term "unsatisfactory," but the proposed survey was in fact a response to a very great demand that we felt we couldn't answer through the regular census.

Commissioner-Designate Berry. Mr. Hogan, you described some debarment efforts, but you vaguely alluded to them as being in the pipeline and that they related to cases involving minorities and women, and then you talked about a number of—or at least two cases in which there had been payments made for discrimination against handicapped. Could you be clearer? Have there been any actual debarments or fund cutoffs from contractors instigated and concluded by OFCC or not?

Mr. Hogan. There have been in excess of 20 debarments concluded by OFCCP. The point I wanted to make was that these were cases arising under the law that protects minorities and women. There have not been as yet debarments of contractors either for discrimination against the handicapped or for failure to pursue affirmative action.

However, there are about 20 cases in the administrative hearing process, which is the process that arrives at debarment, so there should be perhaps before the end of this year a number of final actions, hopefully, if the Department of Labor prevails in the hearing, debarments of contractors who refuse to meet their obligations to the handicapped.

**COMMISSIONER-DESIGNATE BERRY.** We had a witness this morning from AT&T who talked about their affirmative action plan and ticked off a number of items. I did not notice in the list the evaluation of administrators to see to it that they were carrying out plan objectives. Does OFCC require that? Would there be an advantage to requiring it? I mean for administrators in the company; I don't mean administrators at OFCC.

**MR. HOGAN.** There is not a specific requirement in our regulations presently that supervisors be judged, among other things, for their actions or failure to act with regard to the handicapped. That would be an optional item that certainly would be well for companies to consider, and it may be well for us to consider adding to the requirement.

**COMMISSIONER-DESIGNATE BERRY.** Do you think it would be a good idea?

**MR. HOGAN.** I think so. I think it has been somewhat of a help with regard to minorities and women.

**COMMISSIONER-DESIGNATE BERRY.** Thank you.

Mr. Boyd, you alluded to some problems with putting the selective placement program in EEO offices, if I recall correctly. You said that on the one hand—I think you were the one who said that—some people thought it was a good idea, some people thought it was a bad idea, some people worried about it. Was the worry because there was fear that the groups that are already in EEO might ask for some of the selective placement slots or—what was the problem, and do you think it is a good idea or not?

**MR. BOYD.** What is moving to the EEO office is not so much the selective placement function as responsibility for monitoring affirmative action. Employment of handicapped individuals involves personnel functions in unique ways. For example, accurate job analysis and equitable classification of modified position descriptions are vital parts of reasonable accommodation in many instances. Success depends upon personnel functions that could not easily be carried out in an EEO office. Even if program leadership is transferred to the EEO office, it is still necessary for the personnel office to provide extensive support services and maintain an effective selective placement program.

**COMMISSIONER-DESIGNATE BERRY.** Oh.

**MR. BOYD.** I think it is time that program leadership be transferred to EEO offices, just as it is time that handicapped individuals be brought into the civil rights movement.

**COMMISSIONER-DESIGNATE BERRY.** And the people who complain about it, why are they complaining?

**MR. BOYD.** Advocates for handicapped individuals fear that programs for their constituency will get short shrift in EEO offices because there is more emphasis on programs for minorities and women. What we are finding is not so much conscious intent to slight persons with disabilities as force of habit, which leads EEO staffs to address the interests of their traditional constituencies first and consider the newest protected class only after plans and programs for other groups are underway.

The current freeze on Federal hiring only makes matters worse. It is difficult or impossible to increase staff resources, so competition for the few slots that are available redoubles. Also, if only a few people are to be hired, disagreement about priorities among protected classes is intensified. The issue is bogus but recurrent. EEO offices are accustomed to advocating employment of minorities and women, but sometimes find it difficult to recognize the rights of persons with disabilities.

But, with the freeze on employment in Federal agencies, there is only so much hiring that an agency is going to be doing. Now, who do they hire? And I think this is one of the issues that has come up and there has been concern on the parts of some that, you know, one program is going to get short shift by the other program.

**COMMISSIONER-DESIGNATE BERRY.** Once the freeze is lifted, as all freezes are eventually lifted, what should be done about the problem that has been cited by some of the testimony of not having disabled individuals in jobs in the Federal Government, especially dealing with the problems of the disabled? There was one witness who cited as fact that in one of the major departments none of the people who were at the top as senior civil service or SES were actually from the disabled community and that that seems to be a problem in many agencies. Do you have any suggestions as to how that can be dealt with?

**MR. BOYD.** Our focus now is on bringing disabled individuals into the work force. The focus may change in years to come.

Dispersion studies show that as a group handicapped individuals now in the Federal work force have jobs very comparable to those held by their nondisabled peers. The very highest level jobs are an exception, but handicapped individuals as a group have fared very well. When you look at specific disability categories, however, the similarities begin to disappear. Persons with certain types of disabilities tend to be concentrated in low-level positions.

As for high-level positions, there are not many handicapped individuals in these jobs. EEOC certainly supports affirmative recruitment to bring qualified persons with disabilities into the applicant pools for senior-level positions and positions in the senior executive service.

Handicapped individuals are not included in the Federal equal opportunity recruitment program (FEORP), largely because it is presently impossible to develop for handicapped individuals the kinds of data that are required. Basic FEORP principles and methods, however, can be adapted and applied in programs for handicapped individuals. EEOC has instructed Federal agencies to develop special recruitment programs that are parallel to FEORP and that will increase the number of handicapped individuals in the applicant pools from which vacancies at all levels are filled.

Although we are not emphasizing dispersion at this time, we are asking agencies to analyze and report to us the dispersion in the work force of persons with specified severe disabilities. In the future we expect to pay more attention to such matters as internal promotion of handicapped employees and equitable representation of persons with disabilities at all levels, in all types of jobs, and in all organizational and geographic components of each agency.

COMMISSIONER-DESIGNATE BERRY. Thank you.

COMMISSIONER SALTZMAN. Thank you. I would like to express our real appreciation for your contributions and participation this afternoon. Really, I think you added a great deal to our understanding. Thank you again.

I will ask the next panel, the State panel, all to come forward, please.

## State Panel

COMMISSIONER SALTZMAN. I apologize for keeping time on our speakers, but the Commissioners caused us to lose a little more time. I apologize for that. I will try and get us back on schedule.

I will introduce our first representative on the State panel. JoAnn A. Lewis serves as director of the California Department——

CHAIRMAN FLEMMING. May I ask the consultation to come to order, please. Conversations outside.

COMMISSIONER SALTZMAN. Yes. If there are to be conversations, please take care of them outside.

Ms. Lewis serves as director of the California Department of Fair Employment and Housing. That department is the civil rights agency responsible for enforcing antidiscrimination laws. The department investigates complaints of discrimination in employment, housing, public accommodations, or services based on physical and mental disabilities.

Ms. Lewis, I will let you know when you have 5 minutes remaining.

## STATEMENT OF JOANN A. LEWIS, DIRECTOR, CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, SAN FRANCISCO

Ms. LEWIS. Thank you very much.

I just want to begin by indicating that in California our department covers all employers of five or more. We do not have authority to handle physically handicapped in the housing area. Our authority is limited to employment.

[See Exhibit No. 8.]

Ms. LEWIS. Our agency has been organized since 1959 and physically handicapped was added to our laws in 1974. We interpret physically handicapped to mean the impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of functional coordination, or any other health impairment which requires special education or related services. We do have some exceptions to the physically handicapped, although we construe as liberally as possible our interpretation. We do not handle drug and alcohol abuse cases, mental disability, or what our commission characterizes as voluntary disabilities, such as obesity. We are currently reevaluating that because we have had a couple of examples where obesity was perceived as a handicap, so we are reevaluating and making recommendations to the commission on whether obesity should be included.

In our enforcement of physically handicapped cases, we find an interesting profile that is somewhat at variance with our regular employment cases. We find that the group who files charges of discrimination based on physical handicaps are predominantly male—about 71 percent—they are Caucasian—about 66 percent—and that the two major areas of complaint tend to be refusal to hire—about 42 percent—or for dismissal—an additional 41 percent.

We find that we are able to resolve physically handicapped cases much more satisfactorily than we do our regular employment cases. We have a higher satisfactory adjustment rate, some 21 percent as opposed to 16 percent for regular employment cases.

I was interested to determine whether there was any difference in the geographic distribution of physically handicapped cases in California. It compares favorably with all of our cases, and, that is, most of the complaints come from southern California, which is understandable because that is where most of the population is. But about 65 percent of all physical handicap cases come from southern California.

Within California we have roughly 7,600 employment cases that we handle each year. Physically handicapped cases are 6 percent of that, about 475, and probably will top the 500-plus mark this year. Those figures are 1979 figures. That makes them about, as I said, 6 percent of our workload and they are all individual charges. The law in California requires that we resolve these complaints within 1 year, and what we call our turnaround time currently is between 9 and 11 months. We are hopeful that by January of 1981 we will have moved that to about a 6-month turnaround. In other words, from the time the complaint is filed with us to the time we reach an adjustment or complete our investigation, it will be roughly 6 months.

It is interesting because in California there has been a recent change in our law and also in the administration of the FEP agency. Since then we have been fairly aggressive in enforcing the laws in California and the commission has handed down 13 precedent decisions. Of those 13 decisions, 6 were in the area of physically handicapped. Most of them—I guess three out of the six—had to do with back problems. There is a general prohibition against employing someone who does not have a "normal" back, and our commission has been very clear that in physically handicapped cases, individuals must be judged on an individual basis and, therefore, three of these decisions have dealt with various back problems.

The other cases—let's see, one had to do with a high blood pressure case. Essentially, the employer asserted that a person with high blood pressure should not be in a position of stress and the commission disagreed and was able to demonstrate that the stress did not affect the blood pressure and the person was able to function satisfactorily.

The other was against a sheriff's department, having to do with a hearing loss, and the sheriff's department's assertion that a person with a hearing loss endangered the safety of themselves and others because they would be unable to hear a whispered command. The commission indicated that persons with normal hearing might also miss a whispered command and instructed them to reestablish, reevaluate the standard.

The other was against the city of Modesto, having to do with a future risk to the employer because of this person's health problems. The individual had diabetes and heart problems and they were very concerned that if this man—he was an engineer for the city—if he were employed and continued to work, the city might incur a considerable liability should his health fail.

I think that we are beginning to develop some case law on how physically handicapped cases, or how individuals who have disabilities, must be evaluated as they apply for employment and for continued employment.

We are a little bit, I guess, derelict in that the State of California has just issued its first set of employment regulations in March of this year which define what physically handicapped is considered to be in California and how employers are expected to respond to disabilities.

The agency also has responsibility for contract compliance, similar to what OFCCP has for the Federal Government. We have not yet begun our enforcement efforts in this area, so I have no information or any real educated guesses as to what we may run into when we begin to evaluate affirmative action plans for the handicapped.

In California the State employees are covered by the State personnel board and they have a special unit for developing affirmative action plans within State government. Our agency does not handle the discrimination complaints for State employees. We do, as I mentioned before, have responsibility for local governments and for private employers. About the only exceptions to our law are religious, nonprofit employers.

**COMMISSIONER SALTZMAN.** Thank you, Ms. Lewis.

Thomas J. Peloso, Jr., has been chief deputy director of the Michigan Department of Civil Rights since 1976. He has been with the department since 1956 and has served in the capacity of acting director of the agency in 1970, 1972, and 1975.

Mr. Peloso is actively involved with the National Association of Human Rights Workers, having served as vice president of the midwest region, and is also a life member of the National Association for the Advancement of Colored People.

Thomas J. Peloso, Jr.

## STATEMENT OF THOMAS J. PELOSO, JR., CHIEF DEPUTY DIRECTOR, MICHIGAN DEPARTMENT OF CIVIL RIGHTS, DETROIT

**MR. PELOSO.** Thank you. Commissioners and people attending the consultation, we have two laws in Michigan that the department of civil rights has the responsibility for enforcing. I guess you could call it separate but equal.

We have the Elliott-Larsen Civil Rights Act and the Michigan Handicappers Act. This is the entitlement given the act by the Michigan Legislature.

These acts are administered, however, under the same rules of organization, practice, and procedure developed for the commission and implemented by the commission.

These rules provide for court remedy as well as for administrative remedy. A person who has been discriminated against, whether it be a handicapped person or a person because of race or sex, may avail themselves of an appeal to the circuit courts in the State where their case would be tried *de novo* .

Michigan civil rights enforcement power is derived from the State constitution and from Public Acts 453 and 220 of 1976. These were both effective on March 31, 1977, and there are subsequent amendments.

The comprehensive Elliott-Larsen Civil Rights Act broadened jurisdiction in the areas of employment, education, housing, public accommodations, and public service to include several new protected classes. These would be age, sex, marital status, height, weight, and arrest record.

Protection for the handicapped, however, presented some unique problems that could be better served by separate legislation, according to the beliefs of the legislature. The separate legislation that offered protection for the handicapped in parallel areas is Public Act No. 220, Michigan Handicappers Civil Rights Act. This act specifically prohibits discrimination because of a handicap unrelated to the ability to perform a specific job or benefit from a public accommodation or place of residence. It prohibits educational institutions from promoting or fostering physical or mental stereotypes in curriculum development, textbooks, and training or learning materials. It encourages, but does not require, affirmative action, permitting adoption with commission approval of plans to eliminate present effects of past discriminatory practices or to assure equal opportunity to the handicapped.

The act prohibits eliciting information concerning the handicapped unrelated to job performance. The State's attorney general, however, has recently negated a departmental policy which made it unlawful to inquire about the handicap or the use of an adaptive device or aids. He held that such information was necessary for provision of reasonable accommodation.

Public Act 220 incorporates a clause making employers responsible for accommodating an employee or applicant unless such accommodation would impose undue hardship. In some cases a simple adaptive device or aid may equip the handicapper for job performance. In many cases no such aid is even required. There is little case law, however, to establish reasonable accommodation and an even skimpier history of voluntary accommodation for handicappers by employers.

Need for new investigative training for staff was inherent with enactment of the Handicappers Civil Rights Act. Special investigative tools are employed. The claimant must complete an information sheet identifying the handicap and the agency or physician certifying the handicap—this is provided in the law itself—indicating reasonable accommodation the respondent could make to employ the handicapper and, also, must sign medical release forms for obtaining necessary records.

Investigators who rarely possess medical knowledge or expertise must rely on outside experts for judging the severity or the restrictions of a physical or mental condition. If respondent's and claimant's physicians disagree on limitations imposed by the handicap, a third neutral physician is employed, with the third opinion receiving the weight and resolving the complaint.

Another investigative tool is a job or task analysis. For this, the investigator must visit the jobsite, observe and often even perform the work, question other workers, and sometimes confer with unions having knowledge in the actual job requirements. In addition to this, the investigator in many cases must contact handicap organizations to get expert advice on the ability of a particular person to do a particular job.

Although Public Act 220 requires handling of complaints on a case-by-case basis, there are similarities in the cases resolved to date. All have involved defensive arguments of respondents who maintain they cannot hire handicappers because they could incur future liabilities or injuries. Further, they argue, a dramatic increase in liability for workers' compensation imposes an undue hardship. The commission rejected the possible future injury defense, interpreting the law to mean current ability to perform. The workers' compensation liability presents an admitted conflict with protection from discrimination for the handicapped. The issue was subject for heated debate by the legislature during the evolvement of the act. Arguments of the possible burden it could place on respondents were overridden by the passage of the bill.

The commission has ruled consistently that handicapped applicants protected by the act must be considered for specific jobs. This results from an automobile industry practice of placing applicants in broad job classifications. Limitations determined following required physical examinations then were applied to all jobs within the classification. In these cases, the commission has determined that determination of the physical requirements of specific jobs must be meshed with the abilities of the claimant and all future applicants.

Since 1977 the department has received over 1,500 handicapper complaints. From our records we know these complaints, physical and mental, now rank third in the total number filed. Race and sex lead. Between two-thirds and three-quarters of these claimants are white males. Approximately 95 percent of all complaints are in the area of employment and most involve failure to hire or unfair dismissal.

A hand-tabulated survey shows the most frequently cited handicap is back trouble, followed by complaints of discrimination due to vision, epilepsy, and heart problems. Over 1,100 of these cases have been closed. About 40 percent of these resulted in beneficial resolutions for the handicapped.

While the Michigan Civil Rights Department is constitutionally mandated to enforce civil rights laws of the State, the department cooperates with other agencies to encourage comprehensive protection for handicappers. Among these is Michigan's Bureau of Rehabilitation. This bureau works with business to achieve voluntary job placement of handicappers. The bureau also administers a second injury program which encourages the hiring of persons with back, heart, diabetic, or epileptic conditions. Incentive to hire is provided through limiting liability for an occupational injury or illness to 2 years. Subsequent benefit payments come from the second injury fund to which all employers contribute. The civil rights department encourages qualified claimants to use this program to expedite their hire by otherwise reluctant employers. Department staff also encourage respondents to administer physicals prior to hiring in order to use the second injury fund more frequently.

In February, standards of procedures to implement the Governor's executive directive, civil rights compliance in State and Federal contracts, were amended to include handicappers. Handicap has been defined consistent with the State and Federal regulations and specific affirmative steps have been outlined to ensure equal employment opportunity and equal opportunity in the provision of services, activities, and programs. Further, a proposed amendment to Public Act 220 would require a nondiscrimination clause in all State contracts and requires special efforts by educational institutions to recruit handicapped employees and higher education students.

The significant portion of this bill would broaden the definition of mental handicap, now covering only mental retardation, except in housing, to cover the full range of mental conditions. The department has suggested this expansion be limited to mental retardation and mentally restored due to the limited ability of both public and private sectors to determine the present ability to perform. Expansion of the definition could impair investigation and resolution of complaints, although it would benefit persons with a history of mental illness who suffer employment discrimination.

Enactment of the Michigan Handicappers Civil Rights Act was slow in coming. Inadequacies and ambiguities continue to surface. This is inevitable because this act, more than any other civil rights legislation, is designed for the individual. Each case is unique and the law undergoes continuing scrutiny and interpretation as each case is litigated or resolved. But weaknesses notwithstanding, our experience with the act has convinced us that handicap discrimination can be dealt with effectively by an established civil rights agency.

[See Exhibit No. 9 for additional statement by Thomas Peloso, including text of the Michigan statute on handicapped persons.]

COMMISSIONER SALTZMAN. Thank you, Mr. Peloso.

Our next panelist is Commissioner Marilyn E. McClure. She has had extensive professional experience in social work, primarily in Chicago and Minneapolis.

Commissioner McClure holds degrees in sociology from McAlister College and the School of Social Services Administration at the University of Chicago. She is a commissioner of the Minnesota Department of Human Rights.

Commissioner McClure is active in community and professional organizations. She has chaired the Minnesota Chicano Federation and has served on the board of directors of the St. Paul Urban Coalition. She is first vice chair of the Spanish-Speaking Affairs Council in Minnesota.

Commissioner McClure.

## STATEMENT OF MARILYN E. McCLURE, COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN RIGHTS, ST. PAUL

Ms. McCLURE. Thank you very much. I am honored to be with you here today to share some of the enforcement experiences that we have had in Minnesota relating to employment discrimination of disabled persons.

Since early 1973 and prior to enactment of the Federal Rehabilitation Act, the Minnesota Human Rights Act has included prohibitions against discrimination on the basis of disability in employment, housing, education, public accommodations, and public services. The law applies to public and private employers who employ at least one person.

In the first year that law was effective, the department received 12 charges of disability discrimination in employment. This represented 3 percent of the total employment charges received in 1973. By the end of 1975, 17 percent of the employment charges filed were allegations involving disability. In recent years allegations of disability discrimination have constituted 19 percent of employment charges received by the department. An allegation of discrimination because of disability has become the third most frequent type of employment charge filed with the department.

Discrimination cases in Minnesota for the most part have dealt with individuals who do not claim to be handicapped, but whose medical history is used by prospective employers to disqualify them from employment.

Ms. Leslie Milk of Mainstream, in her testimony earlier today, observed that until the passage of the Federal Rehabilitation Act of 1973 handicapped meant visibly handicapped. That was and in some instances still is the popular conception. However, the Minnesota Legislature did not choose to support this conception in 1973 when it amended the Human Rights Act to prohibit discrimination on the basis of disability.

Illnesses commonly perceived to be disabling were also discussed during legislative debate. It is clear that legislative intent in Minnesota was to include a variety of handicapping and disabling conditions within the protection of the law. For this reason, the term "disability" is broadly defined.

Disability is defined in the Minnesota Human Rights Act as a mental or physical condition which constitutes a handicap. Handicap is not defined, and according to Minnesota law undefined words should be construed according to their common and approved usage. A dictionary definition of handicap is "something that hampers a person, a disadvantage, a hindrance."

In addition, the Human Rights Act contains a section which prescribes that the act should be construed liberally to accomplish its broad purposes. One purpose of the act is to secure freedom from employment discrimination against any qualified person. Therefore, the department has argued that the term "physical handicap" should be broadly construed to include all physical conditions which constitute a disadvantage or hindrance in employment.

Minnesota courts have not yet had the opportunity to consider this definition of handicap. There are two exceptions in Minnesota law to the broad prohibition against discrimination because of disability. The Human Rights Act provides that it is a defense to a complaint brought under the Human Rights Act that the person bringing the complaint or action suffers from a disability which poses a serious threat to the health or safety of a disabled person or others. The burden of proving this defense rests with an employer.

The department has argued successfully that for an employer to establish this defense the employer must show that the danger is present at the time of employment and likely to occur. It is insufficient for an employer to prove that problems may occur at some time in the future.

The second exception under the act allows an employer to refuse to employ an individual because of the person's disability if the absence of the disability is a bona fide occupational qualification for the job. The department has maintained that in order to establish this defense an employer must prove that only applicants without a particular disability or disabling condition can satisfactorily perform the job.

The department has established policies and positions with respect to disability discrimination. These positions for the most part remain untested. Substantive rules and regulations in employment discrimination have not been promulgated by the department. There is a dearth of discrimination case law under the Human Rights Act in the area of

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disability, but I would like to share with you the particulars of some of the cases that have been considered by Minnesota courts.

Two district court decisions affirmed the department's position that certain medical standards imposed by the city of Minneapolis as part of its employment screening process excluded applicants on the basis of disability in violation of the Minnesota Human Rights Act.

One case involved the disability of pulmonary tuberculosis and two individuals, one employee and one applicant of the city of Minneapolis. In the first instance, the applicant began employment with the city as a clerk-typist. On physical examination, the city's physician concluded that she had a lung cavity which might have been caused by tuberculosis. The city's medical standards precluded employment of any person who had had pulmonary tuberculosis, active or quiescent. The employee was terminated.

In the second instance, an applicant was denied employment as a clerk because the city's physician found tubercular cavities in his lungs. The applicant had received chemotherapy, and medical test results indicated that the applicant was noncontagious and safe for employment. The city argued that the applicant's tubercular history constituted a serious threat to his health and safety and that of others. The medical test results refuted the city's argument.

The city also asserted that its lung and chest medical standards constituted a bona fide occupational qualification, but this argument was rejected on two grounds. First, the city failed to show any factual basis for believing that all or substantially all persons who have lung cavities indicating that they might have had tuberculosis would be unable to perform the jobs of clerk and clerk-typist efficiently and without threat to themselves or others. The record indicates that persons with such lung cavities may be employed safely following chemotherapy treatment and test results demonstrating the effectiveness of that treatment.

The city also did not show a factual basis to believe that it is impractical or impossible to ascertain which individuals with a lung disability can be safely employed. The department argued that individual determinations about employability must be made.

It was demonstrated that such a determination can be made by a doctor knowledgeable about tuberculosis on the basis of laboratory tests and length of chemotherapy treatment. A hearing examiner ruled against the city of Minneapolis.

On appeal to district court, the city argued several points. First, the city sought a bona fide occupational qualification test that would be limited regarding disability because the range of activities limited by physical conditions constituting handicaps is much greater than in sex discrimination cases. But the department argued that the focus of the bona fide occupational qualification exception is not on the range of activities to be limited. It is, rather, on the negative effects of stereotyping individuals on the basis of physical characteristics unrelated to ability to perform.

Second, the city argued that a business necessity existed not to hire unreasonably high-risk employees. However, the city failed to show that persons with a tubercular history are an unreasonably high risk, that they have a higher turnover rate because of their lung conditions. Also, the city did not show an absence of an acceptable alternative practice other than barring employment of persons with lung conditions.

The medical evidence demonstrated that the city could adopt a less discriminatory medical standard requiring less chemotherapy treatment. Thus, the city failed to meet the three-pronged business necessity test which provides that, one, there must be sufficiently compelling purpose for the policy; two, the policy must effectively carry out that purpose; three, there must be available no acceptable alternative practices which would better accomplish the business purpose advanced.

Third, the city raised the issue of possible tubercular problems versus present condition. Both the former employee and the applicant had conditions which had been treated and controlled, thus causing no concern for the future.

Fourth, the city urged that where there is a difference in medical opinions, the bona fide occupational qualification standards should be more flexible than in other areas of discrimination. However, the record demonstrates that there was no disagreement among medical experts concerning the pertinent issues in the case. The physician who testified agreed that the former employee and applicant could both perform safely on the job, that laboratory test results, not the presence of lung cavities, were significant in establishing contagiousness, and that the city's standard requiring a year of chemotherapy was not necessary. The district court affirmed the decision of the hearing examiner.

In the other district court decision involving exclusionary medical standards, the city of Minneapolis denied employment to an individual because he had a history of a heart attack. The applicant was hired on a temporary basis pending the outcome of the physical examination required of all new employees. The city's physician testified before a hearing examiner that the reason the applicant was rejected was that the city's medical standards classified anyone who had a history of myocardial infarction as not acceptable.

The applicant's personal physician testified that he would have no limitations in performing a sedentary job, but that there was an increased risk of another coronary event. The city's physician stated that there was a good probability of another coronary. An expert on cardiovascular disease testified that medical conditions should be evaluated in conjunction with specific jobs.

The hearing examiner concluded that the city had failed to establish a BFOQ and ruled that the increased risk of another coronary event is of no consequence, since the applicant's ability to perform the job at the time of employment is the proper consideration. The hearing examiner applied the *Weeks* test for BFOQ in determining that the city had not established a BFOQ. The *Weeks* test comes from the case *Weeks v. Southern Bell Telephone Company.*

The city appealed to the district court, raising the question of whether the hearing examiner had appropriately adopted the Weeks test. The city argued that since disabilities are very often not stable conditions, they are different from other protected classes; therefore, the test for a BFOQ should not just consider present ability to perform the job, as required under *Weeks*, but should also allow for consideration of risks of future incapacities. Such a test would allow an employer to select an applicant showing indication of being able to provide employment of a reasonable duration.

The *Weeks* formula requires the employer to show on a factual basis that: (1) all, or substantially all, the members of the protected class are incapable of performing the work; or (2) it is impractical or impossible to determine, on an individual basis, which persons can and which cannot perform the job.

The district court upheld the hearing examiner's use of the *Weeks* formula.

COMMISSIONER SALTZMAN. Commissioner McClure, is the rest of your testimony all in written form?

MS. MCCLURE. No.

COMMISSIONER SALTZMAN. No? Could you get to that which isn't, and submit that which is typed for the record? It will all be put into the record. If you would, conclude with the remarks that are not typed and cannot be submitted, but which you would like to give orally. Okay?

MS. MCCLURE. Okay.

There is another problem that is peculiar in Minnesota having to do with back abnormalities. That has to do with our Finnish population in the northern part of the State. Finns make up 21.9 percent of that population and that is a higher percentage than all other ethnic groups. They seem to have a greater likelihood of lower back abnormalities and, at the same time, the taconite and mining industries use an employment standard that excludes people with back abnormalities on the basis of simply an X-ray. That is the cause of much activity with our department, both with United States Steel and Boise Cascade.

To conclude my remarks today, I cannot emphasize [too much] the importance of including disabled persons as a protected class under Title VII of the 1964 Civil Rights Act. A lesser standard for the disabled than for other protected classes under Federal law is unacceptable.

The Minnesota Legislature adopted this position in 1973. Surely Congress can place disability discrimination on equal footing with race and sex discrimination. I urge you to use your influence as the Commission on Civil Rights and as individual leaders to press Congress to accomplish this task. The efforts to ensure that disabled people have the opportunity to participate fully in the work force have only just begun. There are many barriers that have yet to be removed. Thank you.

[See Exhibit No. 10 for supplemental statement by Marilyn McClure, including text of Minnesota statute on the handicapped.]

COMMISSIONER SALTZMAN. Thank you. You will leave your entire statement with the staff?

MS. MCCLURE. Yes.

COMMISSIONER SALTZMAN. Thank you very much.

Ann Thacher Anderson is general counsel of the New York State Division of Human Rights and is responsible for all aspects of the division's legal work, including public hearings, litigations, and the drafting of opinions and correspondence. She had 6 years of private practice in major law firms in Washington and New York City before assuming her present position.

Ann Thacher Anderson.

## STATEMENT OF ANN THACHER ANDERSON, GENERAL COUNSEL, NEW YORK STATE DIVISION OF HUMAN RIGHTS, NEW YORK, N.Y.

MS. ANDERSON. Thank you. It is a great pleasure to be here with you. I am going to cut my remarks as short as I can. I am not going to give you any statistical detail because I believe we submitted statistics to you in writing earlier this year or last and I don't think so much has happened that they are out of date.

I will tell you that we have had jurisdiction, since 1974, over discrimination because of disability, a term defined in the statute and whose definition has been the subject of litigation and legislation amendment, as I will enlarge upon presently. We have it in employment, we have it in places of public accommodation, we have it in places of education which are tax exempt and nonsectarian, and we have it in housing.

[See Exhibit No. 11 for the New York statute on the handicapped.]

Ms. ANDERSON. I am not aware of any major coverage of the statute which does not cover disability. If you have a particular detail in a question, I can refer to the law later.

Right after the Human Rights Law was amended to entrust this substantial area of jurisdiction to the division, the division set about preparing guidelines that would serve as tools in the interpretation of the new statute. I can only say that those guidelines are in an almost constant state of revision as we ourselves learn more about this field and realize that assumptions made in 1974 are no longer valid after the 5 or 6 years we have had studying actual cases.

For example, originally it was determined that we should not consider ourselves as having jurisdiction over any aspect of alcoholism, over any aspect of drug addiction, or over any aspect of obesity. All these three positions have now been substantially modified. We are asserting our jurisdiction over a category that we refer to as recovering alcoholics; namely, those persons whose drinking problems do not prevent their performance in a reasonable manner of the activities involved in their jobs or occupations. To the same extent, those workers with a history of drug addiction who are undergoing treatment and whose addiction is no longer active are regarded by the division as within its jurisdiction. Obesity is now seen to be a disability.

I want to focus now on our definition of the term "disability." It resembles one spoken of by my confrere from Michigan. We had in the original statute this awkward language. First of all, I should say that the definition covered any physical, mental, or medical impairment resulting from anatomical, physiological, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.

Now, let's focus on the hard part. There was a proviso and it read as follows: "Provided, however, that in all provisions of this article dealing with employment, the term shall be limited to physical, mental, or medical conditions which are unrelated to the ability to engage in the activities involved in the job." Right there you have a problem, because you have a phrase, a set of words, which the courts of New York, anyway, have had great difficulty in construing with reference to specific jobs and specific people.

Let me give you my exhibit A. There was a school bus driver named Leo Vissa. Leo Vissa had driven the school bus without accident, without any unfavorable comment related to his job performance, for some 5 to 10 years. In 1976, I think it was, he was told he must submit to a test. His hearing was tested and it was found that, although his hearing tested out quite appropriately and normally up to the pitch level of 4,000 CPS [cycles per second]—I'll come back to that in a minute—above 4,000 CPS his hearing acuity fell off.

The school nurse who took this test averaged out his scores at all levels of pitch and gave him a flunking grade. I should tell you that 4,000 CPS is that high note on the piano where the piano keyboard leaves off.

What we had here was an extremely high frequency level of hearing impairment, but below 4,000 no detectable impairment. Nevertheless, Mr. Vissa was discharged from his school bus driving job and came to us and filed a complaint.

I won't burden you with the problems we had with medical witnesses, expert witnesses. It was virtually our first trial of a disability complaint and involved us in forensics which, at that point, we were quite unaccustomed to, but we did succeed in obtaining a finding of discrimination and a cease and desist order, including a directive that Mr. Vissa should be rehired, and this was sustained on appeal by the State human rights appeal board. (Our first level of appeal is an administrative appeal board.)

Then the school district took it into court and the appellate division, third department, unanimously threw it out, telling us that we should never have taken jurisdiction over the complaint in the first place. They then seized upon this definition and its somewhat theoretical language concerning "unrelated to the ability to, etc., etc.," and they said that any hearing impairment is obviously—they kept referring to things like "common sense"—is obviously related to the ability to drive a bus.

Then they reached around for what would be a disability that wouldn't be related to the ability to drive a school bus, and they said, "Well, maybe an impairment of the hand or an impairment of the sense of smell." They then threw it out on that basis.

Because of the safety issues very clearly present in a question of employment of a school bus driver, there was a lot of "scaredy-cat" among my staff as to whether we should appeal. But the commissioner wanted to appeal and I wanted to appeal, and I decided I would take the thing myself to the court of appeals and just see if we could get it turned around.

We went into it in great detail. We argued that it was ridiculous to apply a purely theoretical test because that became like a conclusive presumption against the complainant's ability to perform. We argued 504 regulations. We argued every trick in the book I could think of. Nevertheless, the thing was affirmed and we were judged by the highest court of the State to be without jurisdiction over substantial categories of disability cases.

We went to the leigslature, confronted them with these decisions and said, "Let's revise the statute." Twenty-four hours of talking with various legislators worked a very nice change. We now have a definition of disability with a proviso which is worded specifically in terms of the complainant and in terms of the job or occupation sought.

What has happened since then, however, is that the courts in subsequent cases have inserted *dicta* to the effect that this new definition should not be applied to cases still pending in the division. However, the sponsors of the original legislation have now put forward a bill, which we hope will be enacted this session, which would specifically make the new definition applicable to cases in house as of April 1, 1980. This should save most of our caseload.

Meanwhile, I just have to tell you one more thing before I conclude my remarks. Quite out of sight of the employment field, the education jurisdiction provided us with a very interesting case. I won't give you the names of the parties because there is a problem of privacy and a relationship that is to continue, but a brilliant psychiatrist, psychologist—clinical psychologist, I think is really the term—applied to a psychoanalytic institution in the city of New York trying to become a member of their research training program which offers extensive work in psychoanalysis. She had a history of Parkinson's disease, but her physician said that she has been in complete remission since 1974. Nevertheless, she was turned down.

She filed a complaint. Much complicated shenanigans in litigation. But the complaint culminated in a finding of discrimination and a direction that she be ordered admitted to this institution forthwith. Then there was litigation in the appeal board and in the appellate division. The appellate division, in a long opinion, conclusively sustained us with a great deal of very helpful discussion.

The complainant has now been admitted and is, I hope, in the preliminary steps of developing a training analysis relationship with an analyst at the institution. We continue to keep a rather anxious eye on the situation in the hope that a really viable relationship can develop between the complainant and the respondent.

This concludes my remarks.

**COMMISSIONER SALTZMAN.** Thank you, Ms. Anderson.

I would like to express the appreciation of the Commission to each of you for participating, for taking time out from your busy schedules to provide us with this important information. Thank you very much. Dr. Berry.

**COMMISSIONER-DESIGNATE BERRY.** I just have one question, I think, for everyone who is here. Since you described some quite remarkable legislation in your own States, which seems, on the face of it at least, sufficient to deal with the employment problem, and since also, unlike the situation with discrimination on the basis of race, for example, where before there was Federal law on the books, many of the States didn't have much in the way of legislation—I think you would agree with that—do you think——

Ms. Anderson. No, no. Wait a minute.

Commissioner-Designate Berry. I don't mean your States, but I am saying States in general.

Ms. Anderson. Okay.

Commissioner-Designate Berry. In the areas where you had racial segregation, for example, there were not laws saying that racial segregation should be ended, and so Federal law was in part initiated to try to get some movement in that part of the country. I think you would agree with that.

Ms. Anderson. Right.

Commissioner-Designate Berry. If that is the case and if you have these remarkable pieces of legislation in your four States already, what do we need to do in the Federal Government beyond applaud you and say, "Pursue the legislation you have there and continue to enforce it"? Is there some need for some Federal enforcement or legislation and why, given what you already have on the books and what you have described?

Ms. Lewis, would you—I would like each of you to comment briefly on that.

Ms. Lewis. Well, I would certainly say there is need for Federal legislation and, as was mentioned earlier this morning, there is a bill that is going through that our State has supported, certainly the concept, and in fact that piece of legislation. I think that without Federal legislation there are many employers who would not be touched by the State legislation and, therefore, it is very important that all employees have the protection of these laws.

Commissioner-Designate Berry. So yours is not broad enough.

Ms. Lewis. No. We have no coverage, for instance, over Federal employees in our State.

Commissioner-Designate Berry. Go ahead.

Mr. Peloso. I am in agreement that there should be Federal legislation. I think that Title VII should be amended to include protection for the handicapped. I think that the fact that many States still do not have protective laws is evidence enough that there should be legislation on the national level to cover this important area.

Commissioner-Designate Berry. So you think it is needed for other States, not for your State.

Mr. Peloso. Well, one of the problems that every State has and every jurisdiction has is the lack of resources. If you add them all together, they don't amount to enough to cover the problem, and I don't look upon additional legislation that would grant additional authority and resources to the Federal agency to conduct protections for the handicapped as being unreasonable. I think, if anything, it is needed to supplement whatever has been done locally, at the State and local level.

COMMISSIONER-DESIGNATE BERRY. Just to sharpen the point before you respond, because I am very much interested in this issue, do you think that in your States, at least, Federal law and more Federal enforcement is required because you don't have the available resources and the Federal Government will have the resources to implement it? Is that the issue, or is it just a matter of coverage, as Ms. Lewis said, or is it mixed, or what is the argument for more Federal enforcement?

MS. MCCLURE. I would like to say that if I file a charge in my department on the basis of my national origin or my sex, I could file a charge alleging discrimination under the State law and I can also file one with EEOC alleging discrimination under the Federal law. It seems to me that not to include the disabled treats them as a second-class protected class.

COMMISSIONER-DESIGNATE BERRY. Ms. Anderson?

MS. ANDERSON. Also, let's face it, there is a mind set clear across the country that until the Feds get involved, it is not for real—most unfortunately, because I think that disserves our Federal system, where the local government and the State government really ought to be seen as having broad areas of concurrent jurisdiction with the Federal Government. Nevertheless, until you get that presence, that Federal presence, in any area, it is not so visible. People don't think you are for real.

COMMISSIONER-DESIGNATE BERRY. I understand.

COMMISSIONER SALTZMAN. Commissioner Ruiz?

COMMISSIONER RUIZ. I have no questions.

COMMISSIONER SALTZMAN. Dr. Horn.

VICE CHAIRMAN HORN. I take it that in each of your State laws, governmental institutions are included the same as private sector institutions. Am I correct in that assumption?

MS. LEWIS. Yes.

VICE CHAIRMAN HORN. No differentiation?

MS. ANDERSON. I have to make one slight modification to that. Yes, with respect to employment and housing and places of public accommodation; but with respect to our education statute, the courts ruled somehow that public schools don't come under it with respect to admission to education programs.

VICE CHAIRMAN HORN. This is K through 12, or higher education, also?

**Ms. Anderson.** It is any public—they ruled with respect to public education generally. Our statute speaks in terms of tax exempt and nonsectarian, and the courts figured, well, if it is tax exempt and nonsectarian—they saw the public school as so obviously not tax exempt and nonsectarian that they saw it completely excluded from the definition.

**Vice Chairman Horn.** In other words, in New York tax-exempt, nonsectarian institutions are excluded.

**Ms. Anderson.** Are excluded.

**Vice Chairman Horn.** But you have a unique situation, as I recall, where the University of the State of New York, which has existed from Revolutionary times, encompasses both private and public school accreditation, etc. Is that the reason for the decision?

**Ms. Anderson.** You know what I really think it is, is the way the law came in a sort of back-door fashion and has never been really looked at and polished up.

Anyway, the courts came to what I think is a somewhat extraordinary interpretation and everybody is living with it. But I had to tell you; that is the difference.

**Vice Chairman Horn.** Let me ask you, Ms. Anderson—I am intrigued by the obesity definition and the changes being made in that. As you know, police departments have standards of performance—where officers get beyond a certain weight, they are relieved of their duties and they have to pass certain tests, etc., etc. Have you had any cases such as police cases arise where it gets down to can you perform the job or can't you, regardless of weight?

**Ms. Anderson.** I don't know of any specific case. Probably I will think of one 3 minutes after I leave the room, but at the moment I am going to speak theoretically only. I don't know of a case, but I imagine our approach would simply be, can the person who technically does not meet the weight maximum or whatever, can they do the running and jumping and saving people from burning buildings, or whatever the job involves? Can it be done? It seems to me that necessarily is the test. It is an individual one related to the specific job and to the specific complainants.

**Vice Chairman Horn.** I take it, of the four States represented here, New York is the only one that is experimenting in the definition of alcoholism, drugs, and obesity. Am I wrong on that?

**Ms. McClure.** Minnesota has a decision on the hearing examiner level that, in fact, says alcoholism can be likened to diseases like diabetes and heart conditions, and it is a disability within the meaning of the Minnesota hearing examiner.

**Vice Chairman Horn.** A lot of people are arguing alcoholism is a disease. As I understand the New York definition, though, it is a restricted definition of alcoholism, and I take it you are implying that the Minnesota definition is a broader definition.

If States are to be social laboratories, as Justice Brandeis once said, and New York, California, Minnesota, and Michigan really are among the more progressive States in America for a century, I just wonder where we are heading because the Federal Government might catch up with you some day and that is what I want to get on the record. [Laughter.]

**Ms. Anderson.** The Federal Government did catch up with us. In fact, they pushed us into this because the Attorney General of the United States wrote an opinion defining disability or handicapped—I forget the precise term—as including alcoholism.

**Vice Chairman Horn.** Well, I would like to get a dialogue here on Minnesota and New York as to the degree—how do we define this? We agree this is an immensely difficult area. I would like to first hear over here as to how you feel you can reconcile the New York approach, the more restricted Minnesota approach, in terms of public policy, say, if you got to a Federal policy in this area.

**Ms. Anderson.** As best I can, the restriction on the definition, it really isn't a restriction on the definition except in the employment context where you have that proviso, the proviso that the term shall be limited to disabilities which do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation. That is where your restriction comes in with respect to alcohol.

I am happy to report that we have had very few complaints involving alcohol. They have been primarily in the employment area and it has involved that restriction. As to the actively drinking alcoholic who wants equal access to a restaurant, that case has not yet come to us, and I can see that it would have borne a certain amount of embarrassment, but we would have to take the complaint and investigate whether the complainant was in fact admissible to the restaurant. There is always, I think, in any effort in these matters a rule of reason.

**Vice Chairman Horn.** Yes, Mr. Peloso, did you have a comment on this alcoholism definition?

**Mr. Peloso.** Well, the definition of physical handicap in Michigan covers anything. There is nothing that is excluded in Michigan law. And we have had——

**Vice Chairman Horn.** Have you had cases in this area?

**Mr. Peloso.** Yes, we have had cases of people who are alcoholics or had been alcoholics being rejected from jobs.

**Vice Chairman Horn.** And I take it the end result was as long as he could perform the job, regardless of the alcoholism, then he should not be excluded or that is a discriminatory act. Was that your end result?

**Mr. Peloso.** That is correct. That is the attitude that the commission has taken in Michigan, the person's ability to do the job. If he is impaired from doing the job because of the alcoholism and he can't do the job, then he wouldn't be protected.

**Ms. McClure.** Excuse me. I have a quote here from the hearing examiner on that case you might be interested in. He said, "Alcoholism can be compared to epilepsy and diabetes which, when treated, do constitute a disability, but are not disabling."

**Commissioner Saltzman.** Dr. Flemming?

**Chairman Flemming.** This is really a followup on Dr. Berry's question. Most of you were probably here when we took testimony earlier today about 504, and there has been some reference to 504 in your testimony and the regulations issued under 504. Admittedly, very little has been done. Out of 29 agencies that should have issued regulations under 504, 5 have done so.

But I would like just a brief comment from each one of you as to what your reaction is to the regulations that have been issued up to the present time under 504 and whether you feel they are going to be helpful to you in the carrying forward of your program or whether they are going to work the other way.

Ms. Lewis?

**Ms. Lewis.** Yes. I would like to say that the regulations under 504 have been very helpful to us in California and, in fact, as we developed our own employment regulations and just issued them in March, the commission used a lot of the information in the 504 regulations to make them compatible. So, yes, they have been very helpful to us. In fact, they were the only guidelines we had for a long time.

**Mr. Peloso.** We are not totally self-sufficient and we do read with regularity the *Federal Register.* When agencies publish guidelines, we pay very particular attention to those guidelines. If we can use them in our own jurisdiction profitably, we don't hesitate to adopt all or part of them.

**Chairman Flemming.** Ms. McClure?

**Ms. McClure.** That is the case in Minnesota. We have used them as guidelines to guide our own practice as we investigate cases and also draw on them for our arguments in litigation.

**Chairman Flemming.** Might I say that as a former president of Macalester College and a former member of the St. Paul Urban Coalition, I am delighted to welcome Ms. McClure as a witness here today.

Yes.

**Ms. Anderson.** I would say personally that I have found the 504 regulations extremely helpful. I don't believe, however, that our courts are yet sufficiently comfortable with the concept of our jurisdiction over discrimination based on disability that these guidelines have emerged into their consciousness. What will really do it, however, is if legislation is enacted which expands Title VII, the Title VII as we know it, to cover this sort of discrimination because then what happens is that the Federal interpretation becomes the minimum standard, and that is how we really give it to the courts.

**Chairman Flemming.** I gather that all of you would favor that particular action on the part of the Congress, that is, the amendment of the Civil Rights Act of 1964 to definitely include handicapped.

**Commissioner Saltzman.** Dr. Ramirez?

**Commissioner-Designate Ramirez.** I don't have any questions.

**Commissioner Saltzman.** Then I can just simply repeat my thanks to all.

## Constituency and Advocacy

**Chairman Flemming.** May I ask the members of the next panel to take their places, please.

It is my pleasure to present first Marcia P. Burgdorf, who is codirector of the Developmental Disabilities Law Project at the University of Maryland in Baltimore. Ms. Burgdorf codirects with her husband this Developmental Disabilities Law Project. In addition, she also directs the Legal Advocacy Program of the John F. Kennedy Institute, Johns Hopkins University, Baltimore. Her work involves developing projects of national significance that provide training and technical assistance to lawyers and other advocates concerning the rights of handicapped persons. We are delighted to have you with us.

### STATEMENT OF MARCIA P. BURGDORF, CODIRECTOR, DEVELOPMENTAL DISABILITIES LAW PROJECT, UNIVERSITY OF MARYLAND AT BALTIMORE

**Ms. Burgdorf.** Thank you very much.

I am really delighted to be here today to talk with you on what is one of my favorite subjects, and that is the civil rights movement for handicapped people. I think it is fair to say that the civil rights movement for disabled or handicapped individuals, which started in the early seventies, has made a tremendous amount of progress. Progress has been made in ensuring an equal opportunity in housing, in access to community services, but one of the areas that has seen the least progress is in employment.

It is fair to say that employment is one of the keys to giving individuals status in our society. If one doesn't have a job, one doesn't have very much respect. At the present, our country is facing a recession, and the President is concerned about having 7 or 8 percent national unemployment for the general population. It is not unreasonable, therefore, to look at some of the statistics that we have heard today and see that for many years handicapped people have been faced with 60 or 70 or 80 percent unemployment. By comparison, these figures show that handicapped individuals are a disenfranchised group of our population. We are talking here about people who are *qualified* to have jobs. We are not talking about people who have no job skills. These are people who, in fact, have some kind of ability, who could hold a job, but for one reason or another are excluded from the job pool and therefore are being discriminated against.

From my personal experience in representing and working with disabled people, the number one problem is the attitudinal problem. I would like to share with you one of my personal experiences. I have been a lawyer and advocate in this field for almost 10 years, and one of the examples I have used is the blind bus driver example. One category where you can almost categorically say someone must have the ability to see is to drive a bus or probably to do anything in relation to a bus. I often used this in talks as one of the few jobs a blind person could not perform. Recently, someone sent to me an article from the Detroit newspaper which noted that the number one trainer of bus drivers in the city of Detroit is a man who does not have sight. He is the most fantastic trainer because he uses his sense of hearing to actually observe whether the trainee has the driving skills.

I tell that little story to suggest that we all need to be very careful when we are looking at whether or not disabled people have the necessary skill. It is so easy to presume and exclude people on things that seem obvious to us when, in fact, they can perform the job in spite of our presumptions. We always have to look at the individual to consider his or her abilities. We have heard this message from Leslie Milk today as well as from a variety of other people at the Federal and State level. This key question requires an employer to match the functional requirements of the specific job to the individual's ability. That is the only way to determine whether or not a person can perform the job and is qualified. The question can never be whether they have epilepsy or a history of mental illness or they are in a wheelchair or they have hearing impairment, obesity, or any of the other disabilities, but can they do this particular job based on the individual abilities that they have.

We have heard a lot of statistics and examples of stereotypes. One thing I haven't heard today which I would like to put in the record is some statistics about mentally handicapped people. One State that has a State human relations law for handicapped persons did exclude this group, and I think that that is unfortunate. Mentally disabled, mentally retarded, and mentally ill people should definitely be given the same legal protection and the same equal opportunities as other disabled persons.

For example, of every 30 mentally retarded people, 25 of those individuals are going to be able to lead normal lives. In other words, if they have the proper education and training, these disabled people get married, have a job, pay taxes, raise their children, and lead normal lives. Four of the remaining five people will probably need some assistance throughout the course of their lives, but, again, they can get jobs, be self-supporting, and live what we call a normal life. Only 1 out of every 30 retarded people is so disabled that they will need continuing assistance throughout the course of their life. Therefore, when we look at the stereotype of mentally disabled or mentally retarded individuals, it is important that we be very clear that these people also can be qualified for jobs and should not be excluded from any kind of legislation or civil rights actions on their behalf.

Let me reiterate two of the key points that Leslie Milk and other participants have discussed. One of the key excuses that we hear about why disabled people aren't hired is the cost, the cost of making buildings and jobs accessible. I think that costs have clearly been overestimated. Let me give you an example from something I know firsthand. I have sat on a 504 committee at one of the local universities, which shall remain nameless, and the committee came up with an estimate of how much it would cost to make this campus accessible to handicapped individuals. They came up with an estimate of $6 million. I looked at this $6 million and I said, "What does this include?" Almost $4 million of the cost included work on very sophisticated computerized elevators. This campus had lots of high rise buildings and a very fancy elevator system. One of the requirements of accessibility is that the buttons be no more than 4 feet 2 high, so that someone sitting in a wheelchair can reach them.

The estimate included $4 of the $6 million to rip out all these computer systems to put in new elevators, in order to lower the buttons and reprogram the elevators. Nobody ever told the engineers that all you needed to do was go to the local dime store, buy a little sunction cup with a chain, and attach a stick; then anyone sitting in a wheelchair would still *functionally* reach the top button.

I guess I am just trying to reiterate or underline Ms. Milk's comments. Common sense and good information can go a long way to overcome some of the things that are given phenomenal cost estimates when, in fact, they really don't cost much to make accessible.

In addition, in the employment area, the private sector, there are tax incentives. A private employer is allowed to have up to $20,000 tax credit to make their building accessible. This is a real carrot that can be offered to the private sector.

The third thing that I wanted to mention that clearly impacts on employment is transportation. If a disabled person can't get to the office or he can't be there at a certain time every day, he is going to find it awfully hard to keep a job. I raise the point that transportation and access to transportation goes hand in hand with being able to hold down a job for disabled people.

Let me touch very briefly on what I consider some of the key employment problems facing disabled people. It would be nice if there was one simple thing to say, "This is what we mean when we say employment discrimination against handicapped people." But in fact there are a variety of kinds of things. Some of them are very direct, and Ms. Milk related to the fact that it is still not at all unheard of for employers to say very openly "Sorry, we don't hire people in wheelchairs," or "We don't hire mentally retarded people." Discrimination can also be subtle.

In the preemployment area, there are many concerns because preemployment inquiries and preemployment testing presume a certain educational level, while 90 percent of our adult handicapped population was excluded from the educational system. They were not allowed to go to school in our country! Therefore, it is difficult for them to pass written, vocabulary, and other educationally oriented tests. As recently as 1973, 2 million handicapped children were out of school, because their families were told that they were not allowed to come to school. We did not allow many of our disabled citizens to become educated so that they could compete in the job market.

There are also situations where there are physical barriers to employment. We represented a woman at one point who was number 1 out of 385 people applying for an administrative-executive secretary position. She was in a wheelchair and, although the employer offered her the job, she could not take it because there was no accessible bathroom within a mile of the building where she would have worked. Eventually, the employer agreed to modify the bathroom.

In addition, there are all sorts of medical questions that are asked. The Commission has heard a lot of testimony about that from the State level. The general practice, which seems to be accepted in the courts, is that the first requirement is to look at the functional job requirements and to match these functions to individual's skills. Only after the person has been hired can the employer then look at the medical testimony or the medical evidence about the individual. The medical information, therefore, cannot be used to deny them the job, but can only be used to make appropriate reasonable accommodations. Many States have laws on the books now which exclude questions about mental illness, epileptic seizures, or other kinds of questions relating to labels and not to a person's ability as illegal.

The last point in terms of employment discrimination is that many disabled people who get hired are denied the same benefits that other employees get. Disabled persons are told that they are hired, but they can't have access to the group insurance policy because it would be too expensive, or they can't work overtime because they are not eligible for overtime. Some analogy can be drawn to the restrictions that held that women were not allowed to lift weights beyond, say, 50 pounds. The individual wasn't allowed to have the opportunity to show whether she could or could not handle it. The same limitations for disabled people in issues of overtime and fringe benefits should be viewed as discriminatory.

Because of the time limits, this is a very quick overview. I want to emphasize that it contains a somewhat simplistic analysis, but I think these are some of the key areas that the Commission would want to look at and make some analysis about what are some of the necessary remedial actions.

I would like to close by giving what I think are the three key recommendations that I would like to see the Commission make.

The first one is to support the amendment of Title VII of the Civil Rights Act to include handicapped persons. The White House Conference for Handicapped People in 1976 very clearly articulated that disabled people themselves would like to be covered under the Civil Rights Act.

I also heard some discussion that caused me concern earlier. I think we have to be careful not to be afraid. I think the coalition of minority groups and groups in our society who have been discriminated against needs to go together to Congress to make this reality.

The second recommendation is that if the Commission is going to get involved and take a leadership role, which I think is a tremendous opportunity and an important thing, that you should be aware that there are many other resources already out there. We have heard about State human relations commissions, etc. Another source of assistance and advocacy for handicapped people is a group of federally funded, State-mandated advocacy services for disabled persons. They are called the protection and advocacy systems for developmentally disabled persons. The Developmental Disabilities Act, Public Law 94-103, section 113, established the protection and advocacy systems. This legislation has been incorporated into Public Law 95-602, which is the present Rehabilitation Act of 1978.

These P&A systems are for developmentally disabled persons. Let me quickly define that. That is a Federal term which essentially means someone who is handicapped in their developmental years (before they reach the age of 22), which means that unlike some people who are hurt later on, they don't even have the benefit of a normal developmental process. These individuals must be impaired in three or more of their major life functions.

The protection and advocacy systems are independent of service-providing agencies, and they are required to have the authority to pursue all legal, administrative, and other remedies on behalf of handicapped people. In the last 2 years, P&As have handled approximately 50,000 cases. These are not court cases, but cases revolving around discrimination, including some employment situations, educational discrimination, institutional problems, etc. This would be an important resource that the Commission should be aware of. The P&As have a pretty good track record in almost every one of our States and territories.

In addition, there are a lot of other resources out there with varying levels of expertise. If the Commission were going to take a leadership role in providing training and technical assistance to the Federal Government and to the private sector, the Commission needs to be the coordinator of all these various programs that are providing assistance and advocacy to disabled persons and their families.

Let me close by telling you a story. I recall something that happened in my household not too long ago. I have three small children so I watch a lot of "Sesame Street." On "Sesame Street" they have many disabled children, and they also have a deaf woman who teaches sign language. I have three little girls, two that are 5 and one that is 4, and they were sitting out in the kitchen one day doing sign language, and I didn't know whether they were putting me on or this was real. So I said, "Show me a few things." So they showed me "same" and "different."

I said, "Now, tell me, girls, do you think Linda, the deaf woman on the show, and the little girl who is mentally retarded with Down's syndrome and the other child in the wheelchair, are they the same or are they different?" They looked at me like I was crazy, and they said, "Mother, we are all the same." That's what this is all about.

Thank you very much.

[Applause.]

**Chairman Flemming.** Thank you very much.

Mr. Ronald W. Drach is the national employment director for the Disabled American Veterans. He joined the group's professional staff in 1970 as a national service officer in Pittsburgh. In addition to this work, Mr. Drach serves on the board of directors of many affirmative action groups, particularly the President's Committee on HELP Through Industry, Retraining and Employment, and the Fairfax County Manpower Planning Council. He also consults with the veterans committee of the Interstate Conference of Employment Security Agencies.

We are very happy to have you with us, Mr. Drach.

### STATEMENT OF RONALD W. DRACH, NATIONAL EMPLOYMENT DIRECTOR, DISABLED AMERICAN VETERANS, WASHINGTON, D.C.

Mr. Drach. Thank you very much, Mr. Chairman. First, I would like to apologize for being a few minutes late and perhaps disrupting Ms. Burgdorf's statement.

I would like to take this opportunity to express our appreciation for having the opportunity to appear before you all today and also to commend you for your interest in issues affecting disabled veterans and handicapped individuals.

As you may know, the Disabled American Veterans is a congressionally chartered, nonprofit organization currently comprised of over 660,000 members. We have been involved in many areas of service to disabled veterans, and perhaps one of the most recent is the whole arena of affirmative action and antidiscrimination programs dealing with employment. Thus far our organization has been involved in assisting disabled veterans in initiating complaints against Federal contractors under what is commonly referred to as section 402 of the Veterans Act, in the total number of about 170.

We have also been very active in filing complaints against the Federal Government as an employer, and we have filed approximately 200 complaints on behalf of disabled veterans against government agencies. I would like to point out, because I believe it is very significant, that of the 200 complaints filed against Federal agencies, about 170 have been filed against the U.S. Postal Service. In our opinion the Postal Service has a very blatant discriminatory policy against hiring disabled veterans, and I am sure that it filters down into the handicapped community in general.

Mr. Chairman, we are in a new decade, a decade in which we hope to see a new focus of enforcement of existing legislation affecting the lives of disabled veterans and handicapped individuals. Civil rights is an ideal embraced by, but all too often denied to, the handicapped citizens of this Nation.

Disabled veterans and handicapped people have made some significant strides in the last decade. I would like to quote from an article in which Eleanor Holmes Norton, Chair of the Equal Employment Opportunity Commission, was interviewed, related to a comment on the 1964 Civil Rights Act. I quote: "The 1960s was a period of lawmaking. The 1970s was a period for law development. The 1980s will be for law application."

Bearing in mind that she was referring to the Civil Rights Act of 1964, we are hopeful that we can skip the decade of law development and get right into the business of law enforcement, which we believe Congress intended it to be.

The Rehabilitation Act and the corollary veterans legislation, passed in 1973 and 1974, respectively, come approximately 10 years after the Civil Rights Act which, as we all know, extended certain protections to various disadvantaged groups in our society. Hopefully, with the help of this Commission, we can bypass that decade of law development, as I previously indicated, and really get into the business of law application.

Mr. Chairman, as Ms. Milk so adequately articulated, the identification of handicapped individuals in this Nation is a very difficult, if not impossible, task, for many reasons mentioned in her statement. We believe that we really need the so-called minicensus of 1982 to obtain a much better data base on the handicapped population.

The legislation passed in December 1974 relating to affirmative action for disabled veterans and Vietnam-era veterans tends to avoid the definition problem of who is covered by the law. The law spells out very explicitly "disabled veteran"—and this is contained in Title 38, U.S. Code, section 2011. The term "disabled veteran" means, "A person entitled to disability compensation under laws administered by the Veterans Administration for a disability rated at 30 percent or more, or a person whose discharge or release from active duty was for a disability incurred in or aggravated by military service."

In order for a disabled veteran to receive compensation, he must file a claim with the Veterans Administration. The Veterans Administration then, based on medical evidence and/or a current physical examination, assigns a numerical rating from 10 to 100 percent in increments of 10 percent, thereby the 30 percent usage. So it is very easy to identify those who are rated at 30 percent.

The VA keeps statistics on these disabled veterans. As of June 1979, which is the most current data available, the VA reports that more than 1 million service-connected disabled veterans meet that definition. An additional 907,000 disabled veterans are receiving other forms of compensation, but don't meet the definition of 30 percent; nevertheless, they are covered by section 503 of the Rehabilitation Act by virtue of being in receipt of compensation, thereby meeting at least one of the three definitions of what constitutes a handicap.

Another 975,000 veterans are receiving benefits commonly referred to as nonservice-connected pension, which again is for a disability, but not related to military service. They, too, would be covered by section 503 because of the definition of disabled person in section 503. So, in essence, you have almost 3 million veterans that are covered by one of the two pieces of legislation by virtue of their receipt of veterans benefits.

Very little other socioeconomic data is known about disabled veterans. The Department of Labor's Bureau of Labor Statistics flatly refuses to keep data on disabled veterans or handicapped people relative to their unemployment rate in the Nation's society. However, in terms of veterans, the White House estimated in October 1978 that the disabled Vietnam-era veteran unemployment rate was approximately 50 percent. We believe that that estimate is not inflated, and we believe that it is just as severe for disabled veterans across the board and maybe even more severe for the Nation's disabled people in general.

The Bureau of Labor Statistics' publication entitled *Employment and Earnings Report*, dated April 1980, reports that 4.6 million people are not in the labor force. By not being in the labor force, they are not counted as being unemployed. And they do not want a job and the reasons given were based on being "ill or disabled." An additional 789,000 are not in the labor force for similar reasons, but are actively seeking employment now. Yet, because they are ill or disabled, they are not counted as being unemployed, and no official unemployment rate exists for these individuals. Combined, there are 5.5 million not in the labor force because of illness or disability. This is approximately 1 in 10 of the total people identified as not being in the labor force for whatever reason.

Ms. Milk also pointed out that another almost 1 million identifiable handicapped people registered with some 2,400 public employment service offices nationwide again actively seeking employment. So we have almost 7 million people that are identified as being "ill or disabled" who are in our population who can be helped by meaningful employment assistance, by effective implementation and enforcement of existing legislation prohibiting discrimination, and yet this administration and prior administrations, at least in the last 8 years that I have been in Washington, have done very, very little to enforce the existing legislation.

Mr. Chairman, regrettably the future does not look bright. As "Johnnys come lately," we fall into the last-hired, first-fired syndrome. The unemployment rate for April has increased to 7.0 percent and is expected to rise even further during the present recession.

With that in mind, I would like to point to a survey conducted by Barnhill-Hayes, which is a management consulting firm in Milwaukee. Wisconsin, which dealt with employer attitudes toward affirmative action. The survey was released April 3, 1979, and according to a news release which preceded the actual release of the survey, it was indicated that: "Handicapped people, Vietnam veterans and Hispanics face the least chance of making significant employment strides during the next five years, executives of leading corporations indicated in a national survey released today." According to that survey, some 47 percent of employers believe handicapped people will make the least significant strides, and another 20 percent saw Vietnam veterans as the least likely to advance.

I would like, with your permission, Mr. Chairman, to submit a copy of this survey for your record.

CHAIRMAN FLEMMING. Without objection, it will be put in the record at this point.

[See Exhibit No. 12 for the survey.]

MR. DRACH. Thank you very much.

I would also like to point out another study that was funded by the Department of Labor and conducted by the Human Resources Research Organization, which is a private consulting firm in Northern Virginia, and, again with your permission, Mr. Chairman, I would like to submit a copy of the executive summary of this survey for the record.

CHAIRMAN FLEMMING. Without objection, that will be inserted in the record at this point.

[This published report, *Executive Summary, Disabled Veterans of the Vietman Era: Employment Problems and Programs,* is on file at the Commission.]

MR. DRACH. Thank you very much.

This study was released in January of 1975. The study was really aimed at assessing the employment needs and the employment services received by a relatively small population, disabled Vietnam-era veterans. The results of the survey came up with a range of unemployment amongst a random sample of disabled Vietnam-era veterans who experienced an unemployment rate of 16 to 51 percent. Now, this was in 1975. The national unemployment rate was approximately 4.8 percent. So, given the best, the disabled Vietnam-era veteran had a rate almost quadruple that of the national population.

Three major characteristics were looked at: the severity of disability based on the VA rating schedule, the level of education, and race. What it boiled down to was the white, college-educated, lesser disabled veterans had a 16 percent unemployment rate. The black, more severely disabled, lesser educated Vietnam veteran had a 51 percent unemployment rate.

The Vietnam Veterans Readjustment Assistance Act of 1974, codified in Title 38, U.S. Code, contains language requiring certain

Federal contractors to take affirmative action to employ and advance in employment qualified disabled and Vietnam-era veterans. Additionally, it required these employers to list their bona fide job openings with the local employment security offices nationwide.

It is interesting that since the beginning of fiscal year 1975, which in essence was the year they started collecting data in terms of the numbers of jobs listed (commonly referred to as mandatory job listing openings, or MJL), that employers listed 5.47 million jobs through fiscal year 1979. Bearing in mind that the law requires two categories of people to be helped through this program, disabled veterans and certain Vietnam-era veterans, despite the fact that almost five and a half million jobs were listed, disabled veterans got 16,000, or three-tenths of 1 percent of all these jobs in a 4-year period. Vietnam-era veterans entitled to affirmative action under this program received almost 500,000 jobs, or 8.5 percent of these job openings. Nonveterans, noncovered applicants got 70 percent of these jobs which Congress intended to benefit disabled and Vietnam-era veterans.

In conclusion, Mr. Chairman, we know that laws are passed by elected officials, laws are administered by elected and appointed officials, and laws are enforced by officials appointed by elected officials. The whole process, in essence, evolves around people elected by the voters. Yet scores of thousands of handicapped people and disabled veterans are unable to vote today in Maryland in the primaries and will be unable to vote in the Presidential elections in November because they cannot get into the poll. They cannot get in there to pull the lever, because of inaccessible buildings, therefore denying them a voice in their own destiny as to who the elected officials will be that will represent them and that will pass laws affecting their lives.

Thank you very much.

CHAIRMAN FLEMMING. Thank you very much.

Our next panelist is Mr. Paul G. Hearne. Mr. Hearne directs Just One Break, a job placement program for the handicapped in New York City. An attorney, Mr. Hearne has long been an advocate for civil rights of the handicapped. He has worked as a consultant for the Office for Civil Rights in the former Department of Health, Education, and Welfare on section 504 and has written manuals and books on the labor rights of the handicapped, the most recent one being *The American Civil Liberty Union Handbook on Employment Rights of the Handicapped.* He has also written statements on 504 for the Legal Services Corporation. He has received many awards for his work, such as the Henry Viscardi President's Award for Outstanding Achievement in Human Resources and the Barbara Ann Paling Memorial Award for Services to the Disabled.

We are delighted to have you with us, Mr. Hearne.

## STATEMENT OF PAUL G. HEARNE, DIRECTOR, JUST ONE BREAK, NEW YORK, N.Y.

MR. HEARNE. Thank you very much, and I appreciate being here.

I would like to say that I am here with a couple of different hats on. As of late, when I have done some speaking in this area, I have a problem deciding which hat to wear. I am, number one, a disabled person who has had the experiences that we are all sharing here today. I am, number two, an attorney who has attempted in many ways to try and do some legal training in the law and to use the law as a tool for my third hat, which I think is an important one, which is to get disabled people employed, into the mainstream of society.

I think that my colleague and friend, Marcia Burgdorf, went through a number of the points of the law which are instrumental in this area, and I really don't want to belabor the technical legal points. I would like to make a couple of points about what I see as the problems to employment. I would like to tie that into the law a little bit and show you how I think the law is really a tool that can be used to prevent the stereotyping which is one of the major barriers to employment, and I would like to make a number of recommendations to the committee.

There are three major myths about employment of handicapped people. The first one is the myth of cost. As Marcia has mentioned, and has been mentioned probably before today, reasonable accommodation does not cost that much. I have been doing training across the country with employers, and they always ask the question, "What are we going to do for reasonable accommodation when we hire this person?" I say, "Well, has the person come in for a job interview?" If the person has, they have probably made the reasonable accommodation to get there. They are the best resource to ask about reasonable accommodation. In many instances, by the time the disabled individual gets before the employer for a job interview, that reasonable accommodation has been made.

The second barrier to employment is attitudes. Stereotyping of disabled people is really the key for why the law is there. I always say that really all the law does is give you a construct to use as the basis for common sense, and I will relate a small personal experience to that.

A few weeks ago I was doing a training in Chicago for employers on 503 and 504, and as part of the training the employers were to sit down and interview a disabled applicant in a role play and then come up with whether or not they would, in fact, hire that disabled applicant for the job. One of the job positions in that training was the job of an EEO manager in that firm, and the individual that they interviewed was in a wheelchair. The interview lasted about an hour, and the employers then sat in a circle and they made a decision, and one of them raised his hand and said, "Well, Mr. Hearne, I would have hired this fellow. He was very qualified for the job. He had, as a matter of fact, superb qualifications, was a verbal young man, and was also very interested in the firm, which is a quality that I look for. But when we got down to the last job requirement, which was a travel requirement—and travel was a very large requirement since we have many district offices throughout the country—and after the individual left we realized that the individual was in a wheelchair and was unable to travel; they were unable to get on and off the plane; they were unable to get into our local offices. So we decided not to hire the person."

So I smiled and said, "Well, sir, I'm from New York and we're in Chicago. I took a plane here, and I am sure if you had asked that individual, they would have taken the plane as well and probably coped with the problem just to get to the job interview."

The point is that although the intention was entirely well-meaning, the effect was discriminatory. The individual made the decision without asking the individual, "Can you do that? Can you perform the job-related tasks?" That is, in essence, what 503 is all about, asking the individual as a resource and doing an interview on the facts, on the merits of whether this person can perform the job-related tasks.

The third thing is physical barriers. It is the most obvious. I would say that the key to employment, as Marcia mentioned and as we will do tomorrow, is transportation. It relates back to the cost factor. It relates back to the cost factor not in the way that it is usually interpreted, meaning that it is very costly to provide accessible mass transit, but it is very costly not to provide accessible mass transit. It is very costly to a disabled individual who has to pay $40 each way for a job interview. They may not get the job and, even if they are placed, they are going to have to be placed in middle management just to afford the transportation to and from.

Those physical barriers, such as transportation, as well as architectural barriers at the worksite which can be very easily modified most of the time, and, if not, there can be job restructuring which will provide for the roles that that individual can perform in the job, as opposed to architectural barriers preventing employment totally—those physical factors can be dealt with.

One thing that I would like to propose to the Commission as an argument that can be made, and I think that it is an argument that holds true, as opposed to looking at the moral issue for a moment—in many instances when we are dealing with different values, we are dealing with different types of employer attitudes, the one issue that you can always make sense of when you argue is the dollars and cents issue. I would like to turn the financial argument around for a moment. I would like to propose that it is not more costly to provide the reasonable accommodations and to provide the mass transit for disabled people to allow them to be employed, but that, in fact, it costs more with the present situation that exists right now.

As Mr. Drach mentioned, billions of dollars are spent on an annual basis for supplemental security income, which is the primary public benefits program which subsidizes at a sustenance level, if you will, most of the disabled population. Without being guilty of stereotyping myself for a moment, I would like to say that, from my experience, I see that there are primarily three different types of disabled persons across the age range. There is, number one, the disabled person who is not employed, not in school, and on public benefits. That, I would say, is the largest portion of the disabled population. There is, number two, the disabled person who is a younger person who may be fortunate enough to be in secondary education and still on public benefits. And, number three, there is the disabled person that is employed, which is probably the smallest portion of disabled persons in the population.

If these billions of dollars are continually spent to keep these two portions of the population alive and not spent by Congress or by the States on access to employment, on transportation, on the real issues that affect disabled people, it is far more costly, since there is no return with this money. If this money is turned into vocational rehabilitation funds and individuals are placed in jobs, they become taxpayers. So that there is a twofold benefit: One, they are taken off the public assistance rolls; and, two, not only are they functionally employed and attaining independent lives as well as economic independence, but they are also paying taxes and broadening the tax base.

This is, in essence, a reverse of the cost argument, but it is a very real one indeed. There really is no return for this money. The support services that are provided are not provided primarily for employment reasons, but are provided for medical reasons, so that many disabled people may be sustained medically, if you will, and yet maintained at a level where they are stuck in the home receiving benefits.

So on the cost level, this is a crucial factor, and I would like to share with you just one statistic and then move on. In 1974 the three public benefit programs—public assistance, which is the State welfare, AFDC, and home relief; social security disability insurance, which is primarily paid to injured workers; and SSI, which, as I mentioned earlier, is the benefit program which goes to most disabled people unemployed—payments amounted to a total of about $8.3 billion. In the same year payments to the States for State agencies that provide vocational rehabilitation services, which are those support services which pay for disabled individuals attaining employment, was about

$500 million, and with that $500 million roughly 150,000 disabled people were employed.

So you are getting a benefit of one-sixteenth of the amount paid for vocational rehabilitation that is paid for public benefits. So you can clearly see that financially, if that were reversed, there would be a vast economic benefit to hiring handicapped people—and, I might add, an economic benefit which would be far less costly than even the most extravagant of estimates with regard to modifications necessary for that employment.

I sort of concur with Marcia's point that, as an attorney, I tend to talk too much, so I don't want to continue too much longer. But I would like to make three recommendations.

Number one, I concur with Leslie Milk's paper that it is crucial that the Commission become integrally involved in the handicapped movement, and it is crucial that they expose the issues. Much of this problem is misunderstanding. In order to change the attitudes—it is a political issue as well as a legal one—the issues must be exposed to the public. There is not enough of us right now to do it on a large scale. If the Commission becomes involved in training, becomes involved as an impetus to exposing this issue, there won't be instances like the one that I mentioned earlier. The stereotyping will eventually fade away and then, to a certain degree, disabled advocates will know who the enemy is, as opposed to who the uninformed are. The discrimination in this area is very grave. The old stereotype expression that the road to hell is paved with good intentions is the one that really covers this area. So that if the Commission becomes involved, it will give the issue exposure on a political level, both before the Federal agencies as well as the States. It will change those attitudes, and some of these myths can be addressed on the merits.

Two, of course, Title VII should be amended to include disabled persons—again, more than for the legal remedies, because there are many arguments that can be posed as to the efficacy of the legal remedies, but for the fact that legislatively the issue will finally be recognized as a valid issue. There have been many, many years of telethons; there have been many, many years of involvement with the issue on the level of paternalism. If this issue is finally recognized legislatively on the civil rights level, then it will give us more tools to do the job that we have to do.

And, third, I think the Commission can be involved in this issue in one very specific way, and that is that there should be a push for the coordination of administrative remedies in this area. Many attorneys, no less disabled people, have a misunderstanding about the remedies that disabled people have in the law. At the administrative level it is crucial in that, even though there are many reforms necessary at the judicial level, most disabled people are poor people. Most poor people don't gain access to the courts, because of the lack of legal representation. Even in the public benefits area, there is still a lack of access to the courts for many minorities, and for disabled people, access to administrative remedies exposes the issue on a local issue. They expose the issue on a one-to-one level. Those individuals can discuss the issue on the merits, and many of these stereotypes can be broken down.

I thank you very much.

Chairman Flemming. Thank you very much. We appreciate it. [Applause.]

Chairman Flemming. Our final panelist is Dr. Frederick T. Spahr. As the chief executive officer of the American Speech-Language-Hearing Association, Dr. Spahr directs a membership organization of approximately 35,000 speech-language pathologists, audiologists, and speech and hearing scientists. The association's members serve millions of disabled children and adults throughout the United States.

Dr. Spahr, we are delighted to have you with us.

### STATEMENT OF FREDERICK T. SPAHR, CHIEF EXECUTIVE OFFICER, AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION, ROCKVILLE, MARYLAND

Dr. Spahr. Thank you.

The focus of my comments will be from the perspective of the employer and a plea for the provision of technical assistance and education to employers.

First of all, it is my belief that, regardless of the laws and regulations promulgated, employment of disabled persons comes about primarily by the commitment of the corporation or the company, and that commitment generally comes about through the chief executive officer, the executive vice president, and/or the chairman of the board.

I could outline a number of ways in which we all here today could advocate for the employment of disabled persons, but I would rather direct my comments to the need of employers for technical assistance. Many employers simply, in my opinion, do not know how to go about employing, maintaining, promoting, and accommodating disabled persons. Employers may seek technical assistance from consultants, and, amazing as it was to me to learn, some of these civil rights consultants are established to help companies circumvent the law and regulations—not to help them comply and not to help them excel in the employment of disabled persons.

In providing an action plan for assisting employers, several factors should be taken into account. First of all, the employment practices of the company need attention. In this area, such matters as job announcements could be reviewed. What do the application forms look like? Is there a place on the form to indicate voluntarily whether a person is disabled and an indication that disabled persons will receive special consideration for employment? Are the announcements sent to agencies where contact can be made with disabled persons?

A second parameter would be to review the employee policies relative to accommodation of disabled persons, for example, sick leave variances where leave can be given in hours or leave can be advanced to individuals who need to see physicians or need rehabilitative treatment.

By the way, most of these recommendations could be established for all employees, not just disabled employees.

A flexitime program that would allow people to accommodate their hours would be beneficial to disabled persons. These programs, by the way, do work. Readers for the blind and interpreters for the deaf could be employed. Employers might find these resources within their own staffs. I think it would be surprising to a lot of companies that, if they were to ask how many of their employees could use sign language, they would find that a number could.

A third consideration is the physical plant accommodations, and those we need not review today as the issues have been discussed in detail. But, again, the employers need assistance. They don't know other than what they have read are the regulations. What are the parking accommodations, the restroom accommodations? Many companies are building new buildings. Are they building them in conformance with regulations and to be of assistance to disabled persons?

Services and aids would be a fourth parameter in helping companies to employ disabled persons. Looking at benefits packages, for example, are there exclusions in the insurance for individuals with disabling conditions and, if so, why are there such exclusions? It is often the case that one finds that the insurance company has no idea why certain exclusions are contained in the package. Or the company may say that coverage of such conditions is too costly, and one must just keep pressing and pressing and pressing until the company does something about arbitrary exclusions for disabled persons. Legal assistance for individuals who are disabled is also important for employers to provide. Some companies maintain confidential and voluntary records systems on employees so that the employer can be of assistance in providing appropriate health services.

Vendors are another source in heightening advocacy and employment for disabled persons. Some employers require that vendors sign a compliance agreement as an equal opportunity employer, not only for women, ethnic minorities, Vietnam veterans, but also for disabled persons.

Companies that conduct many conferences and workshops, for example, can be helped in preparing preregistration forms and other materials as well as to heighten sensitivity to the needs of the disabled.

The fifth parameter would be to develop an annex to the employer's affirmative action plan which, in some instances, is mandated. This affirmative action plan would designate a person responsible for the practices and policies regarding the employment and promotion of disabled individuals. This is critical because, as we all know, everybody's responsibility becomes nobody's responsibility. The responsible officer would receive staff input, mandate periodic review of the plan, communicate the policies, and receive external and internal evaluations of the plan.

There are major obstacles in educating employers and providing them with technical assistance, and these are mostly what I call attitudinal. The first is the definition of disability, which has been discussed here. Many employers simply do not know the definition of a handicap or a disabling condition. Instead, they have their own idea of what a disabling condition means.

Secondly, there is a need to inform employers about reasonable accommodation. Again, I think there is still an attitude that prevails relative to cost, and it is largely due to misunderstandings about sections 503 and 504 because initially there was a great deal of unnecessary panic and by some very well-educated people.

Employers' attitudes are terribly important to explore relative to the laws and regulations. Often we find the situation where the minimal regulations are considered maximal. There is need to urge employers to go beyond the minimum requirements in assisting disabled persons.

Other employees' attitudes about disabling conditions need to be addressed by the employer. It is amazing to find that stereotypes still exist relative to the disabled.

A fifth attitude concerns the difficulty sometimes of the disabled individual in informing the employer of needs. It is very difficult to develop assistance and help and aids if the employer doesn't know what they are. There are a number of ways that employers go about ascertaining needs, and yet, from the employers' point of view, there is the feeling that the employer is intruding when asking. The person with the disabling condition has the same kind of reticence in bringing out the need for certain accommodations to be made.

There are two points with which I would like to conclude. First of all, it must be said that, despite all the plans and technical assistance, the issue comes down to whether or not disabled individuals are employed by the company. It doesn't matter how grandiose are the affirmative action plans and procedures; if disabled persons aren't employed, then the program has failed. Second, despite the obstacles, I would quote Samuel Johnson when he said that, "Nothing will ever be attempted if all possible objections must first be overcome."

CHAIRMAN FLEMMING. Thank you very much, Dr. Spahr.

Commissioner-Designate Ramirez, do you have any questions you would like to address to this panel?

COMMISSIONER-DESIGNATE RAMIREZ. Well, I enjoyed the panel's comments greatly. Having been an advocate in other areas of civil rights, I am particularly turned on by your presentations.

In reference to your recommendations on technical assistance, your recommendations on protection and advocacy strategies, my question is, Are there not programs both in RSA and the Department of Labor that could be brought together in these practical ways that could do the proactive kind of technical assistance that would get us away from simply the adversary consideration? And, if there are, are they not enough? Are they too bureaucratic? What seems to be the problem?

Mr. Spahr, we will start with you.

DR. SPAHR. I am not aware that they are. If they are, apparently they are not being used. Could they be established within those agencies? The answer, in my opinion, is yes.

COMMISSIONER-DESIGNATE RAMIREZ. Paul, are you federally supported in your program?

MR. HEARNE. JOB is about 90 percent private funding. I am aware of some programs with both areas that exist. I would say, though, that, one, they exist at a level which is probably not sufficient to reach an exposure level that would make much of the change; and, two, I don't think that they are well coordinated. If they perhaps were done together, you would see the continuity between rehabilitation training and employment. That really isn't done right now. It is done in sort of a step-by-step thing that, really, since they don't relate well together, doesn't have much of an effect.

COMMISSIONER-DESIGNATE RAMIREZ. So, some interagency cooperation between DOL and Health and Human Services might begin to do it, do you think?

MR. HEARNE. I think it would have a great effect.

COMMISSIONER-DESIGNATE RAMIREZ. Let me ask Marcia: In terms of the people who go through rehabilitative training, one, what degree of success—and I understand our panel is about employment, but I think that the questions in my mind are related—what degree of success in terms of turning out employable people does that training have and how many of the people who are successfully trained by rehabilitative services, whatever the criteria, the predetermined criteria, are, actually get jobs?

**Ms. Burgdorf.** Well, in some ways I may not be the best person to answer that, but let me answer it from an advocacy perspective.

I feel that most disabled people can get jobs. Unfortunately, that is not necessarily related to what their reaction or interaction has been with the vocational rehabilitation services that have been offered to them. Unfortunately, I think most disabled people—if you look at the testimony from the State and the Federal White House conferences for the handicapped people around the country, the number one issue that they raised was employment and they clearly articulated that the vocational rehabilitation system was not meeting their needs.

Now, there are a variety of reasons for that, one of them being the criteria. The criteria do play too much into the old stereotypes and into the short term, one-shot basis.

I think tomorrow when you look and hear the testimony on social services, I think what you are going to find is that in order to provide services and to advocate for the needs of handicapped people, you have to recognize that it is not a one-shot deal, that you help them once and get them placed in a job and then that is it. It is a long term process, especially when we are trying to fight this uphill battle of the history of discrimination. So I think my assessment of the key reason why vocational rehabilitation services as they are structured are not working is that they are focused on this one-shot criteria (you place them and that is it) and that is not how we need to provide services to handicapped people.

Let me just say one other thing, and then maybe some other panelists want to respond to that. I think it would be terrific to have some interagency reaction and coordination about providing services and enforcement of rights to handicapped individuals. I am 100 percent federally funded. I am funded to provide training and technical assistance to advocates and disabled people, parents and families, and private employers and whatever audience. We have asked on a variety of occasions to try and get the various Federal agencies—the Bureau of Education for the Handicapped, the Office of Civil Rights, the Department of Labor—and some of these people to meet together, and we have found from the outside that that has been very difficult to do. I say that not at all trying to indicate that there is bad faith or poor efforts, because I think just listening to some of the people today you can see we have some tremendously talented people in the Federal Government. But for whatever reasons, the inertia is there, and we need someone like the Civil Rights Commission to kind of take that leadership role and say, "Come on, folks, let's all get together, both the private sector and the Federal sector and the State sector, and try and do an overall strategy on how we are going to tackle some of these problems."

CHAIRMAN FLEMMING. Mr. Hearne?

MR. HEARNE. Mr. Chairman, I really want to concur with Marcia. The coordination also provides that sense of continuity that is needed. You see, right now on all levels there is a sense of a one-shot kind of thing.

In New York State I do have a statistic on the number of clients that the vocational rehabilitation agency has. They have about 1.1 million active cases in New York State, which is about—well, roughly a third of the number of disabled people in the State. Out of that 1.1 million, last year they placed somewhere around 120,000. And they have a 90-day followup, which means that if out of that 120,000, 90 days later—and I don't have that statistic, but you are seeing that even if 50 percent hold a job past 90 days of that 120,000, you have 60,000 out of an approximate 3.5 million in the State that are being affected by the agency. So it is scratching the surface.

MR. DRACH. Mr. Chairman?

CHAIRMAN FLEMMING. Yes.

MR. DRACH. I would like to respond to both questions, if I may.

One, on the area of technical assistance and training, I would like to point out that following the reorganization that OFCCP underwent in October of 1978 whereby they brought a lot of compliance people in from other Federal agencies, it was from October 1978 till June of 1979 before they even started any inhouse training for their new people on the handicapped veterans program.

It is kind of ironic. ESA, the Employment Standards Administration, has responsibility for enforcement of 503. ETA, the Employment and Training Administration, has some responsibility in enforcement of 504. ETA won't talk to ESA. ETA is considering going out with an RFP or an 8A to train ETA people on how to enforce 504.

[Laughter.]

MR. DRACH. Now, we have read a lot about, you know, the "beltway bandits" lately and overusage of consultants. There is some technical ability in ESA. I have seen it. I have worked with these people for the last 5 years. But ETA just won't sit down and talk with them. It is just completely asinine. They won't even use existing intradepartmental resources, let alone interdepartmental resources.

In terms of the rehabilitation, I consider one of the major problems is the system itself. We are in the numbers game. Vocational rehabilitation specialists and counselors are required to report numbers of people completing courses of training. They are not required to say how many were successfully placed in employment as an end result.

Of the taxpayers' dollars, the most recent data from the Veterans Administration shows that there are some 860,000 veterans in vocational rehabilitation under the VA's program, of whom 20 percent are in graduate school. This comes out roughly to about $5,000 a year of taxpayers' dollars to train disabled veterans. The Veterans Administration, headed by a very visibly disabled veteran, cannot tell us how many disabled veterans are actually placed in jobs for which we have spent taxpayers' dollars to train these disabled veterans, and I am sure the same thing applies in the private sector or the nonveteran sector for handicapped people in the vocational rehabilitation system.

We need to place these people where they belong. We have trained them, we have spent a lot of money and time in helping them, and now we need to place them in jobs so they can become productive citizens.

Thank you.

**CHAIRMAN FLEMMING.** Commissioner Horn?

**VICE CHAIRMAN HORN.** At this point in the record, what I would like is an exhibit from vocational rehabilitation and any other relevant Federal programs, in case there is not an overlap, as to the number trained in the most recent fiscal year for which data are available to vocational rehabilitation, etc., the number placed with a common standard, if such data are available, as surviving job placement after 90 days, etc. Staff can work that out with the appropriate Federal agency.

**CHAIRMAN FLEMMING.** With no objection, that will be inserted in the record.

[See Exhibit No. 13.]

**MR. GORDON.** You have to carry that one step further, if I might interrupt.

**VICE CHAIRMAN HORN.** Sure.

**MR. GORDON.** And that is how many of them are placed in the kinds of fields that they have been trained for.

**VICE CHAIRMAN HORN.** If they collect such data, we will ask that question—it is a good suggestion—and see if they do collect it; and, you are correct, that certainly ought to be in. That is what the staff can work out, the relevant questions.

Now, Mr. Drach, I would like to get back to a comment that you made that the Disabled American Veterans would like a 1982 minicensus. I wonder if you could elaborate on what you would like that census to be, what has been the nature of the discussions between the Disabled American Veterans and the Bureau of the Census as to the type of queries you would like, did they satisfy your requests in terms of the 1980 census, etc.

**MR. DRACH.** In essence, we haven't had any written communication with the Census Bureau. We have had meetings at which point they told us that there are no monies available for a minicensus in 1982. We have had some input over the last several years relative to the types of questions that should be asked in the 1980 census, and they were pretty receptive to our suggestions and recommendations on the 1980 census. Regrettably, not all people got the same form for the 1980 census.

There is really a paucity of good socioeconomic data on handicapped people and disabled veterans. The Commission's recent report on social indicators for women and minorities was very, very comprehensive and gave us some good indicators as to where women and minorities stand. We don't know where the handicapped population stands.

We would like to see in the minicensus such things as, you know, are they working, are they literally looking for work and not by some government definition excluded from the work force just because they have been discouraged or been discriminated against and have given up looking for a job, but how many actually want to work, how many have faced discrimination, what their average annual income is without public assistance.

We haven't really gotten into a lot of details with the Census Bureau, primarily because we were told flat out that it is going to cost too much. The Bureau of Labor Statistics tells us it is going to cost too much to tell us what the unemployment rate is for disabled veterans or handicapped people. Nobody says to the handicapped people, "Here's a tax rebate because we can't provide you services, or we can't provide you information; therefore, you shouldn't have to pay the same taxes as a nonhandicapped person." We don't see them getting money back that is being poured into public transportation, because it is inaccessible to the handicapped. Handicapped people pay their fair share, those that are able to get a job, but they don't get returned to them the same benefits that nonhandicapped people get.

So there are a lot of questions I think that could be asked in a census, and I would be glad to give you more details in writing at a later time if that would be sufficient.

VICE CHAIRMAN HORN. Well, we would appreciate that and that will be included at this point in the record.

[See Exhibit No. 14.]

VICE CHAIRMAN HORN. Was there a committee that you and other representatives of the handicapped disabled community were on that the Census set up? They set up various committees on Asian American data, Hispanic data, etc. I just wondered if there was such a committee in this area.

MR. DRACH. From my standpoint, I was never asked, or our organization was never asked, to serve on any such committee. Whether one existed or not, I can't comment on.

Our input was primarily by phone, by letter, by some informal discussions in meetings, and probably the major meeting was a combined meeting of the Census Bureau and the Bureau of Labor

Statistics people about 4 months ago where it was finally told to us, I guess, officially, that there would not be a 1982 minicensus.

**Vice Chairman Horn.** Now, I understand that one of the problems BLS has in their monthly data gathering on employment-unemployment is the extent of the sample so that they can get to the divisions in very small categories into which they probably feel the disabled will fall. Is that the excuse they are giving you for not being able to generate the data you need, that the sample is simply not large enough to get at that particular subgroup?

**Mr. Drach.** They give us two reasons. One, it would be too costly, and the sampling error would be so large as to skew any data. Our counterargument is that, you know, skewed data are better than no data right now, because it is just incredible that we can't account for such a significant segment of our population as to where they stand in the unemployment arena or the employment arena.

The other argument that they use is the identification problem. What definition do we use? Do you take a person who recently had a hangnail removed from a toe as a handicapped person? Who is disabled? Who do we count? Who don't we count?

We have offered a somewhat relatively simple suggestion, at least in terms of disabled veterans. We have a numerical rating again. So we said to them, "Well, at least do a sample on disabled veterans. Give us something, anyway. Something is better than nothing, using 30 percent through 80 percent or whatever you want to use." But at least you have an identifiable—and you can categorize these disabilities, and the VA has the people. If we want to go out and do a survey of all disabled veterans who are amputees or have an orthopedic disability, the VA can spit out of their computer a list of every disabled veteran receiving compensation for that disability.

So, you know, there are some materials there or some information there that could be used. Maybe it would be skewed. Maybe it would have a large sampling error, but again, it is a start.

**Vice Chairman Horn.** Well, what I would like at this point in the record, then, is the Staff Director to pursue with the Bureau of the Census, with Health and Human Services, with the Bureau of Labor Statistics, and with others what is their definition of handicapped and disabled and various possible subcategories. I would like to put those side by side in a matrix so we can see if different government agencies are operating on the same fundamental definition and where the variance is.

It seems that one useful service this Commission can do is try to force some overall grappling with how we define this particular community. Because it seems to me you cannot hold the private sector, other government agencies to some sort of definitional standard unless you have some data base from a national pool, if you are going to set goals and timetables, as to how many people fall in these various groups. Otherwise, we just have a chaotic administration of this. It would be exactly the same as if there were no census data on blacks, Hispanics, any other group, or if we did not know, in the case of universities, how many doctorates are produced by various ethnic groups, etc., as to what is a reasonable level of expectations when it comes to employment hiring.

**COMMISSIONER-DESIGNATE BERRY.** If I may add——

**VICE CHAIRMAN HORN.** Let me get this in the record, if I might.

**COMMISSIONER-DESIGNATE BERRY.** If I may add, Commissioner Horn, there was an exchange earlier today between Mr. McNeil, who was here from the Census Bureau, and Ms. Milk on the question I asked, and my impression was that they were working on a 1982 disability survey at the Census, and that was——

**VICE CHAIRMAN HORN.** Let me just get my request in the record on the matrix.

**CHAIRMAN FLEMMING.** That is in the record, and, without objection, that request will be complied with.

[See Exhibit No. 14.]

**CHAIRMAN FLEMMING.** I was going to ask my colleagues who were here when we had the first panel as to whether or not my recollection was a correct recollection; namely, that we had testimony to the effect that there was going to be a mini 1982 census. There was an exchange between the representative, I think, of the Equal Employment Opportunity Commission and Mr. McNeil, who is Chief of the Consumer Expenditures and Wealth Statistics of the Bureau of Census, relative to some of the items that are going to go into that minicensus. Is that——

**COMMISSIONER-DESIGNATE BERRY.** That is precisely accurate, and Mr. McNeil, as I recall, responded to a criticism Ms. Milk had made by saying that there would be a 1982 disability survey. I am somewhat puzzled by that.

**MR. DRACH.** Well, it is a relatively new decision, because in December we were told no.

**MR. HEARNE.** Mr. Chairman?

**CHAIRMAN FLEMMING.** Yes.

**MR. HEARNE.** Might I just make one quick comment about this? I think if there is in fact a 1982 census, there are two things that should be looked at. One, on the definitional problem, you have two basic definitions: a 504 definition and a Social Security definition. And it would be easy to include those—even though those definitions may in fact be mutually exclusive—it would be easy to include those to determine how many disabled people fell under each one. Then the compilation could be made later.

And, two, any sort of a disability survey will have to take into account the reasonable accommodation needs of any other survey. The population is not in the mainstream right now, and they don't show up on the surveys, just like they don't show up on the street. So you will have to include on a disability survey brailling. You may have to include on a disability survey some kind of outreach right into the homes to find this population because it is difficult to get to that level.

CHAIRMAN FLEMMING. Thank you.

Commissioner-Designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Yes. Ms. Burgdorf, could you tell me some more about the protection and advocacy systems for developmentally disabled? This is the first time I have heard about that.

MS. BURGDORF. All right. The question was, tell us more about the protection and advocacy systems.

They were established under the Developmental Disabilities Act of 1975, Public Law 94-103, and what they essentially said was that each State, before they were going to receive any money under the Developmental Disabilities Act—or perhaps even a broader interpretation—could be before they were going to take any money—any Federal dollars, in relation to services or programs for the handicapped—they had to establish an independent agency, independent from State government, that had the authority to pursue all remedies, including administrative and legal, to represent the rights and problems of handicapped people.

Now, they use the term "developmentally disabled." There was a categorical definition at one point in time—I don't know how familiar you are with the term "developmental disabilities," but it used to mean—it targeted mentally retarded people, people with epilepsy, people with cerebral palsy, people with learning disabilities, and people with other neurological impairments. That definition has been expanded to include anyone who has been developmentally disabled or disabled before the age of 22 where the disability seriously affects their major life functions, which is defined fairly broadly, very much like 504: walking, breathing, going to school, socializing, housing, any of those other categories.

So at this point in time the protection and advocacy systems can essentially represent anyone who is disabled prior to the onset of 22. They may not be over the age of 22, but the disability happened to them prior to that time, and they can go and get free advocacy—not just legal, but advocacy—services, which includes training their parents, helping the parents work with the education system, insurance discrimination, housing discrimination, whatever kind of problem that arises out of the disability.

Now, the difficulty with this is that—every State adopted and set up, established a system by October of 1977. So these systems are functioning. The problem is then the government turned around and gave them a very small sum of money. Until this year more than half of the States only had $20,000 apiece to implement this broad mandate to represent all handicapped people. So that obviously created some problems.

I think that if you look at the record with the 1 year funded at minimum level, $20,000, that was the $3 million appropriation in 1978. In 1979 it was increased to $7 million; so it has been doubled. These agencies have represented approximately 50,000 handicapped people around the country in a variety of issues and have done a very creative job considering the kinds of limitations that they have had.

COMMISSIONER-DESIGNATE RUCKELSHAUS. And they work with issues, what? Employment training?

MS. BURGDORF. Employment—their mandate is that they can serve anyone. So if an employer came to them and wanted some technical assistance, they could help the employer, or the particular handicapped individual himself or herself, or a university who wants to write a good 504 plan, but doesn't know how to do it or wants to translate their plan into action. The advocacy system can represent individuals as well as do what we call class advocacy—represent broader issues for disabled people.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

I would like to ask Mr. Hearne and Mr. Spahr: Both of you pinpointed attitudes, a misperception about the cost of accommodations. I wonder if anybody in the private sector is setting themselves up to be consultants in the area of what it would take to comply, either with the Office of Federal Contract Compliance if a corporation is doing business with the government or just a corporation that is finding itself in the business of hiring disabled persons, and counseling them on how either to get affirmative action programs in compliance or how to go about making reasonable accommodations without putting themselves against what they think will be an unreasonable expenditure of money. I know that lots of people have independently begun consulting agencies to tell people how to avoid sex and race, etc., discrimination. How about handicapped?

MR. HEARNE. Yes. There are a number of both private firms, which are run by disabled persons, as well as a number of rehabilitation facilities that are involved in consulting, if you will, in the private sector. JOB has done it, and there is an Industry-Labor Council in New York that does it, and there are a number of others out of the

Midwest that do it. It is a growing kind of thing, but the reason that I think that it hasn't grown as quickly as it may in fact should is that many of the firms still don't know that they need it, so that there has to be voluntary training to engender the interest even to include this population in their affirmative action plan. Once that happens and they say, "Oh, my God, we have to comply with these regulations as well," they seek private assistance to find out technically how to do it. But there is still a low level of that in the private sector, I would say.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I would like to ask this question of the panel: What are the incentives to persons covered by SSI or other disability income to seek employment when if, in fact, the person works, his income—as a recipient of monies coming in—is no longer available? I recall recently I read an article in the *Los Angeles Times* about a disabled person who continued to receive her disability income while at the time she was working on the side to procure a higher education. Uncle Sam caught up with her and claimed she owed the government around $20,000, and then a tragedy occurred, if you recall—I notice you are nodding your heads—she was so frustrated she committed suicide.

Families can't even help disabled persons because such help is evaluated as income to disabled persons, who then lose their disability income. How is this problem being coped with? What are the solutions to this tragic situation? Does anyone have an idea?

MR. DRACH. I would like to comment, if I may.

COMMISSIONER RUIZ. Yes.

MR. DRACH. I think the total picture of the problem is our current income transfer payments system which, all too often, does create disincentives for certain categories, whether they be disabled people or not, to go to work.

I get calls a lot from employers in the Washington, D.C., area who want to hire a disabled veteran. This is kind of extreme, but it happens. They want a disabled veteran, preferably in a wheelchair, preferably of the Vietnam era, preferably a female, and if she happens to be black with a Spanish surname, "Great, we will hire them tomorrow."

I will ask, "How much are you going to pay?"

"Minimum wage, $3.10 an hour."

The unemployment compensation in the District of Columbia is $4.52 an hour. Now, who are we going to get to go to work in a dead-end job for $3.10 an hour in the District of Columbia?

The problem has been addressed, at least in terms of disabled people, in a small degree by H.R. 3236, which is currently pending in conference committee between the House and the Senate. It addresses some of the disincentives for disabled people to go back to work. One of the ones that comes to mind right now is of a person receiving disability insurance benefits, for example, under social security. Current law [provides that], if that person goes back to work, they not only lose DIB, disability insurance benefits, they also lose medical coverage. And then if the job doesn't work out and they try to go back on DIB, they have to wait before the medical coverage is picked up, and, in essence, this was largely attributable to the instance you mentioned out in California, the loss of the medical benefits more so, I believe, than the loss of the income per se.

H.R. 3236 in essence says that by law anybody receiving benefits who tries to work will have a 24-month trial work period. Current law has a very arbitrary 9-month trial work period, very subjective. It is not mandatory, across-the-board. So, in essence, that person would be able to go do work, try it out for 24 months without loss of benefits. That is just one way in which it is being looked at.

COMMISSIONER RUIZ. I have in mind situations where people are receiving disability income where their respective families want to help and they can't help them because the money they take, even a small amount of money, that automatically is deducted. I feel that is more unfair.

MR. DRACH. Well, without advocating fraud, you just don't report that family assistance.

COMMISSIONER RUIZ. Pardon, sir?

MR. DRACH. Without advocating fraud, the person just doesn't report that family assistance, and that is, in essence, what our system says to do. It condones fraud. It says because we, the government, are not going to help you get a job, we are not going to give you enough to live on decently, and if you get any help from your family, we are therefore going to take benefits away; therefore, we are saying to those people, "Well, take it under the table."

COMMISSIONER RUIZ. It is like the situation where two people don't get married.

MR. DRACH. Don't get married, social security recipients. It is a very common thing anymore for elderly social security recipients because of the system. The system discriminates, if I can use that word, in this area, in many areas.

CHAIRMAN FLEMMING. Mr. Hearne?

MR. HEARNE. Thank you, Mr. Chairman. I just want to address one thing about the disincentive, and it certainly does exist. If in fact there could be a progressive trial work period—you see, social security has bantered around cutoff types of things in both areas, both in the income eligibility level and in the trial work period level, and it is not flexible enough. So that if you have 9 months, or, with all due respect, 24 months, if that individual is capable of maintaining a certain income no matter what that particular time is, then they are cut off social security totally.

What may be the kind of thing that could work down the road—and I pose this just as something for speculation—is a combination of the two standards, both in the income eligibility level as well as the progressive trial work period, because the trial work period doesn't reflect the abilities of the individual to earn. It only says, "You have a certain amount of time to make it and that's it," and anyone who has a credit card knows what that means. So that if you have to a certain degree a progressive system to work in—the work incentive to work in the time and income earned type of thing and clearly define the difference between family assistance and earned income, then I think it could be a more equitable type of situation.

And, one last quickie, you also don't count as income things that the individual who is on benefits receives for support services, the additional cost of transportation, the additional cost of home attendant service, the additional medical bills, the additional clothing needs of the individual in the event, hypothetically, that the same is medically needed. Things that are tied in with things that will make it easier for that individual to work in a real physical sense should not be counted as income, and under the present system, even under the new proposed system, they are in fact counted.

COMMISSIONER RUIZ. Under the present system, if you give this kind of help, it is nevertheless considered as income?

MR. HEARNE. Under the present social security system, let's say the individual makes $1,000—just throwing numbers out—let's say they make $1,000 a year, but let's say it costs them $1,500 a year to transport themselves to and from work. That $1,000 a year is counted. When in reality they are $500 behind the situation, they are deemed as an individual who makes a clear-cut income of $1,000 a year.

VICE CHAIRMAN HORN. Okay. You are telling us that the expenses for their unique situation, because it is portal to portal, which was banned years ago, even though handicapped, cannot be taken as a deduction. Is that what——

MR. HEARNE. I'm sorry. It is.

VICE CHAIRMAN HORN. If I remember your example, you said the cost of getting to work would be $1,500. They make $1,000. The $1,000 counts as income. What I am wondering is what happens to the $1,500 on the income tax form? Is that a legitimate expense?

MR. HEARNE. No.

VICE CHAIRMAN HORN. I didn't think so. In other words, should the government, as a matter of policy to encourage employment of those who qualify as handicapped, permit a deduction on home to work or extra expenses beyond what average expenses would be to get to work because one is handicapped? Is that a matter of tax policy you would recommend?

**Mr. Hearne.** Oh, yes, I would. And what I would advocate in that direction is not only that it be an income tax deduction, but that in the initial period, let's say, where there is a trial work period, it will also be deducted from the income that the individual receives in order to make them eligible for benefits.

**Vice Chairman Horn.** Right, as an incentive.

**Mr. Hearne.** Right.

**Chairman Flemming.** Ms. Burgdorf.

**Ms. Burgdorf.** I just wanted to respond. You asked probably one of the most significant questions, and I was happy to hear some of the panelists had some constructive comments on what the answers were to this problem.

But the truth is that this is one of the most thorny issues facing disabled people right now. I don't think there are good answers. We have parts of answers, but I know one other piece that I wanted to share is that we had this discussion about whether disabled people actually count some of the support services and family help and so forth as income. The Social Security Administration has, through a variety of means, noted that the SSI for disabled people is one of the—it has been labeled as one of the programs with the highest error rate, and they are doing a pilot study in the State of Washington to try and exclude people from even getting access to SSI benefits.

All I know is, from my representation of disabled individuals, that that has never been the problem. The difficulty has been getting them on, to get the social security that they legally have a right to, and also dealing with this kind of crazy system where they are thrown off as soon as they get other income. I think one of the key examples of it was a case—and I am sorry I don't know the name, but I will be happy to get it and supply it to you—was a woman in New York, I think, who was turned down for social security because—pardon me?

**Mr. Hearne.** Panzerino.

**Ms. Burgdorf.** Panzerino—because some of this additional income put her over the eligibility. She decided to go to court and, after 6 years, won her court case after following it through and got her back pay for the 6 years. And as soon as that check was deposited in her bank account, she was terminated from the SSI rolls because she was over the allowable amount of money. This is a case that has just come down recently.

I guess what I am saying is I am alerting you to the fact that this is a very complicated area that needs a lot of looking at in terms of what are some of the answers. I think we have highlighted some of the problems.

**Chairman Flemming.** Commissioner-Designate Berry?

**Commissioner-Designate Berry.** I have just one quick question. The question I have is for Mr. Hearne. As you are probably aware, the Supreme Court has in the last few years interpreted the civil rights laws, as it had done in the 19th century, to require intent to discriminate in a number of areas, including employment, voting rights, and the like; and you made some comment about much of the discrimination against handicapped people not being intentional and that there is a gray area and the like. Do you think that intent to discriminate ought to be required and that lack of intent ought to be a defense for employers who do discriminate against the handicapped?

**Mr. Hearne.** One hundred percent, no.

**Commissioner-Designate Berry.** Thank you.

**Mr. Hearne.** Absolutely not. The effect is still the same. The only reason that I addressed that was as far as the implementation of programs—there are many individuals who do not have that intent who, once they realize that they are doing what they are doing, will come over to the right side. However, there are still a heck of a lot of them out there who know what they are doing and are not going to come over on the right side. If that is included in the law, it is going to seriously limit the regulations, as well as the legislation affecting handicapped people. So I would say absolutely not.

**Chairman Flemming.** Any additional questions?

[No response.]

**Chairman Flemming.** If not, we are indebted to the members of the panel for being with us and making presentations and responding to our questions.

Before we recess for the evening, those who are responsible for development of the program today and tomorrow want me to call attention to the fact that at 8 o'clock tonight there will be two slide presentations. One is entitled, "Building For Everyone." This deals with the issue of architectural barriers. That is a slide presentation. And then the next one, which I am not sure whether it is a slide presentation or another type, is entitled, "Through the Open Door," and this is related to 504, a section of the Rehabilitation Act.

So far as the consultation is concerned, we are in recess until 9 o'clock tomorrow morning.

## Social Services and the Handicapped

**Chairman Flemming.** I will ask the consultation to come to order, please.

We are going to spend at least a portion of the morning on social services and the handicapped. The first presentation will be made by Judith E. Heumann, who is deputy director of the Center for Independent Living at Berkeley, California. She has occupied this post since 1976. In this capacity she oversees the daily operations of the center and the Disability Law Research Center, which is the legal service and civil rights training and advocacy program. The center also encourages mainstreaming in public schools and places disabled persons in jobs in the community.

Ms. Heumann has worked for Senator Harrison A. Williams where she was involved in the development of legislation affecting the education and rehabilitation of the handicapped. Her many awards and honors include being one of 20 California women honored by Governor Jerry Brown during the Salute to Women ceremony in 1979.

She will summarize her paper on services, delivery rights, and the handicapped.

Ms. Heumann, we are delighted to have you with us.

# SOCIAL SERVICES AND DISABLED PERSONS

By Judith Heumann*

The statistics are clear: Only a small percentage of the disabled Americans who could work *are* working; only one-third of all blind adults are employed, only 47 percent of all paraplegics. The disabled population is one of the most underemployed in the Nation.

That discrimination exists is evident. What are the causes? Prejudice on the part of potential employers, though documented, is only one thread in a complex web of discrimination that disabled people confront during their lives. Some of these obstacles are inadvertently created by the very government agencies designed to "help the handicapped." What are these patterns and practices of discrimination found by disabled people with respect to various social service agencies and what effects do these social service delivery systems have on the elimination of barriers to the rights of equal employment opportunities for disabled people?

When we say "disabled people," we are referring to the estimated 35 million Americans who, according to the Rehabilitation Act of 1973,

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(1) are restricted physically or mentally in at least one of their life activities; (2) have a history of such a condition; or (3) are perceived as having such a condition. We thus include blind and vision-impaired people, deaf and hearing-impaired people, quadri- and paraplegics, postpolios, developmentally disabled individuals, people suffering from heart conditions, persons who have had cancer, physically disfigured individuals, etc. The definition is broad. It is estimated that 60–70 percent of all Americans will become disabled sometime during their lives. Though this definition cuts across all societal strata, disabled individuals experience discrimination as a *class*. Segregation is practiced equally on orthopedically disabled and mentally retarded people.

As with ethnic minorities, deep attitudinal fears color the interaction between the disabled minority and the rest of America. But discrimination against disabled people has one unique characteristic. Even if one could remove all attitudinal barriers confronting disabled people in their quest for gainful employment, mobility and perceptual barriers would continue to isolate the disabled individual. Support systems enabling disabled persons to overcome such barriers, such as ramps, sign language interpreters, attendant care, are integral to the discussion of civil rights for disabled people.

In this paper, we begin with a view of the disabled individual as a whole being with basic needs and rights. Social service agencies, for the most part, lack such a perspective and dole out service in a piecemeal fashion. One hand doesn't know what the other is doing. The impact of such practices on the disabled individual is to reduce her or him to a subhuman status. Thus the cycle of negative attitude and resultant discrimination that characterizes social interaction for the physically or mentally different individual is perpetuated.

Modern society is still unconvinced that there are compensatory returns on investments in the disabled. Western society has historically considered disabled people inferior and undesirable. According to the Old Testament, orthopedically disabled and blind people could not be admitted to the Lord's house. Greek law stipulated that disabled children be put to death. Plato promoted the idea that "the offspring of the inferior or of the better when they chance to be deformed will be put away in some mysterious, unknown place, as they should."

In more modern times, high school textbooks advocated the institutionalization of all disabled people, classifying the disabled individual as "defective" (like part of a machine) and "lacking some normal power." In the fifties many States required by law that disabled people, including epileptics, undergo forced sterilization. Recent statutory history includes denial of disabled peoples' right to vote, drive, marry, or hold public (elective) office. Anyone who was "diseased, maimed, or in any way deformed, so as to be an unsightly or disgusting *object* [sic]" was prohibited by law from appearing in a public place as late as 1974.

The societal attitudes as evidenced by the foregoing examples have prompted a public policy of segregation. As is well summarized in the Disability Law Resource Center in Berkeley *amicus* brief filed with the U.S. Supreme Court in the Davis case:

> . . .Attitudinal barriers have caused the disabled minority to be excluded from the policy making process and forgotten. We have consequently designed a nation for the average, "normal," able-bodied majority, little realizing that invisible millions cannot enter our buildings, ride our subways and buses, enjoy our educational and recreational programs and facilities and use our communications facilities.

## Education

The groundwork for future employment discrimination begins early and is fully evident by the time the disabled individual enters (or doesn't enter) the public school system. American educational policy toward disabled persons has largely been one of segregation.

Until the passage of Public Law 94-142, the Education for All Handicapped Children Act of 1975, local governments were not required to establish equal educational programs for disabled children. As with blacks and other minority groups, the disabled cannot realistically be given equal opportunities unless they are integrated into the mainstream of society at an early age. The classroom segregation of disabled children maintains the societal attitudes of inferiority of disabled persons, which sabotage any semblance of equality.

Now that there is a law on the books, which guarantees an appropriate education for all children in the least restrictive environment, the problem is enforcement. A recent study has found many discriminatory practices in effect, despite legislation. Published by Educational Advocates Coalition, a consortium of 13 advocate groups for vulnerable children, and entitled *Report on Federal Compliance* (also known as the Children's Defense Fund Report), the study finds:

(1) Children identified as needing special programs are still on waiting lists;

(2) Many children, still institutionalized or in foster care situations, are routinely denied appropriate educational services;

(3) Children are denied support systems such as health care and transportation that are essential for their education in appropriate, least restrictive environments;

(4) Overidentification of children of racial minorities as mentally retarded, often due to culturally biased testing materials;

(5) Severely disabled children are denied education in excess of 180 days; if "appropriate" education for a particular child requires a year-round program, then the law provides for such;

(6) Many children are suspended for up to 2 years for behavior that is a result of their disability;

(7) Many children have not had the individualized evaluation required by law;

(8) States have failed to set up surrogate parents (advocates to act for children when parents aren't available, i.e., when a child is in an institution or under foster care and has no representation).

The departments of education and welfare are not enforcing the Federal law though they know children are not being served.

Public Law 94–142 has made a positive impact: More children are being served; services have expanded; new programs have been created; and many severely disabled children have returned to the community. But advocates, as evidenced in the findings of the above report, cannot declare a victory and go home. The most crucial issue is the absence of support systems like transportation and health care that would allow placement of children in the "least restrictive" environment.

Discriminatory educational practices emerge before and after the kindergarten through 12th grade period covered by Public Law 94–142. Some children need developmental programs from birth. Few States have laws governing the preschooler (some programs are provided under Title XX and the Head Start program). Thus many disabled children are at a double disadvantage by the time they reach kindergarten. What happens after sixth grade? Programs on the secondary level are deficient, limited in most areas to vocational rehabilitation. Consequently, we are blessed with a fine supply of blind piano tuners and orthopedically disabled greeting card designers.

At the postsecondary educational levels, disabled students are discriminated against in admissions and access to programs. Discriminatory practices cited in a recent study from Lawrence Hall of Science at the University of California in Berkeley include:

(1) Complete exclusion of disabled students from departmental programs;

(2) Individual instructor option to exclude disabled students from classes;

(3) Nonrelocation of inaccessible classes to allow disabled student participation;

(4) Discrimination in admittance to departmental programs on the basis of perceived employment opportunities;

(5) Nonmodification of examination procedures so that examinations would reflect student achievement in the course rather than effects of disability;

(6) Individual instructor option to limit the use of auxiliary aids by disabled students such as tape recorders.

So, armed with an education considerably less than "the best money can buy," the disabled individual confronts the world of work. The full weight of systemic discrimination and lack of interagency cooperation is about to be unloaded on his or her shoulders.

## Employment

It becomes increasingly clear as one studies the supplemental security income systems of the department of welfare and the vocational rehabilitation programs of the department of rehabilitation, the two financial mainstays of many adult disabled people, that the American work ethic does not extend to the disabled community. Disabled individuals are encouraged *not* to work. Every year $21 billion dollars is spent by 61 Federal programs on severely disabled adults; $18 billion goes to income maintenance (SSI), and $2 billion goes to direct services and training or rehabilitation. The scales are thus heavily stacked in favor of keeping people on welfare rather than training them for jobs. There are historical reasons for this skewed interest; i.e., successful rehabilitation grants were comparatively late in appearance.

The worst effect of the relation between SSI and the vocational rehabilitation program is the intense disincentive against employment built into the systems. Before a disabled person can work, certain basic conditions must be met. She or he must have a healthy diet, adequate housing, reliable transportation, and, often, assistance in daily routines such as dressing and bathing. A visually-disabled person might employ a reader; a deaf person, an interpreter; and an orthopedically disabled individual, an attendant. Such services are often covered by SSI, as well as disability insurance and medicare payments. As soon as a disabled person makes $200 a month—i.e., is involved in "substantial gainful employment"—she or he loses these benefits. Therefore, when a disabled person considers a job, she or he must determine if the earnings will be substantial enough to affect eligibility for income support and, if so, if the earnings will be substantial enough to meet the continued needs for housing, transportation, and a healthy diet.

Many disabled people are incapable of locating employment that will enable them to support themselves if their eligibility for assistance is cut. Disabled people are faced with a do-or-die situation if they take a job. The low earnings levels that income-maintenance programs set for termination of eligibility encourage the disabled person to rely on handouts instead of employment. Thus, these income-maintenance programs discourage employment, encourage dependence, and contribute to the undignified position of the disabled person.

Often, regulations covering medical services under SSI discourage and prevent employment. The method that medicare and medicaid use to determine the reasonable cost of durable medical equipment (wheelchairs, hospital beds, etc.) is antiquated. Medicare and medicaid cannot legally pay for even 80 percent of the retail purchase price of necessary durable equipment. This equipment is often a prerequisite for employment. Consequently, a disabled person can be confronted with a discouraging "Catch-22" situation. "I can't get a job without a wheelchair, and I can't make up the cost of a wheelchair because I don't have a job. In fact, I can't even get to the medicaid office to confront them with my dilemma!" Thus, medicare and medicaid have implemented a cost-control device that effectively defeats the agencies' intent to provide adequate health care for their clients—a case of "penny wise, pound foolish."

Consider the following example: A certain medical insurance agency in California denied a client's request for a $300 wheelchair seat cushion replacement on the grounds that it is agency policy to pay for seat cushion replacements once every 3 years. The client is ineligible. Since the client has 3 weeks of class and exams left to finish a quarter at college, he attempts to make do with an old, wornout seat cushion. As a result, he develops a decubitus ulcer for which he must be hospitalized for 3 weeks at a cost of $4,000 and is bedridden for 3 additional weeks.

The problems of disincentives in the SSI system cannot be overemphasized. Even without interagency foulups, such as cited above, the disincentive policy alone can account for the great numbers of unemployed disabled people. The benefits issue also underlines the necessity of support services if disabled people are going to be able to exercise their constitutional rights.

What can the disabled individual expect who goes to vocational rehabilitation through the department of rehabilitation? The rehabilitation counselor is influenced by at least two factors: lack of funds and pressure for successful case "closure" (people on the job). Thus, in the past, many severely disabled individuals were not seen as good "closure" risks and could not qualify for vocational rehabilitation. The Rehabilitation Act of 1973 prioritized severely disabled clients for vocational rehabilitation. The result? A rise in the percentage of severely disabled individuals being served and an overall decline in caseloads.

The rehabilitation service agencies can also fall into the discriminatory practice of job stereotyping. Counselors encourage disabled clients to consider jobs that are "most suited" to the client's disability. Conversely, the counselors have discouraged clients from considering jobs that the counselors have prejudicially assumed to be beyond the capabilities of their clients. The result of job stereotyping is that the disabled get confined to relatively few careers. This confinement helps to defeat attempts to integrate the disabled person into society. Thus, prejudicial societal attitudes about the disabled minority remain firm because more people remain unfamiliar with disabled people.

## *Related Issues*

### Affirmative Action

All the systems discussed so far, education, welfare, health, rehabilitation, have one thing in common that severely affects disabled people. These agencies are staffed, with few exceptions, by able-bodied persons. All the good intentions and charitable feelings in the world will not provide these professionals with the knowledge of what it feels like to grow up disabled in a white male-dominated, able-bodied society. Certainly, inservice training sessions to sensitize and inform can have positive results. But an obvious remedy is an affirmative action hiring policy of disabled professionals for these agencies.

### Institutionalization

The general effect of all discriminatory patterns and practices is to segregate disabled individuals from the community. Two million Americans are subjected to the most extreme form of segregation: institutionalization. Federal welfare programs encourage the institutionalization of disabled people. Under Title XX programs, the Federal Government contributes more money per disabled person to the States to pay for institutionalization of disabled people than to pay for necessary inhome support services (IHSS). Even though the total cost of institutionalization is higher for the combined governments, State and Federal policy generally encourages institutionalization.

Institutionalization is the ultimate segregation, carrying to its logical extreme society's treatment of the disabled community. Institutionalization (1) removes disabled persons from possible contact with nondisabled people, thereby depriving both groups of possible enrichment; (2) keeps disabled people in their "place"; (3) sets up expectations that a disabled individual cannot be like anyone else; and (4) removes the possibility of personal control over life decisions from the disabled person. The policy of institutionalization was practiced on all disability groups in the past and today is particularly characteristic of the treatment of mentally retarded and mentally ill persons.

The 1971 amendments to Title XIX of the Social Security Act allow for funding of "institutions" serving as small a population as four disabled persons. Thus, the possibility of small, community-based living arrangements for people with mental retardation was provided. However, implementation of Title XIX has consistently channeled money to large monolithic institutions.

Why this trend to fund large rather than small-scale operations? Money isn't the answer. Small is cheaper in this instance. We are faced with further evidence of the desire to remove disabled people from the community.

A recent paper by the Center on Human Policy at Syracuse University entitled *The Community Imperative* makes the argument that deinstitutionalization, integration, is not only a moral, but also a legal imperative; integration is basic to the constitutional notion of liberty.

### Transportation

Transportation is a public rather than a social service. We must include it here because the availability of accessible transportation is critical to a nondiscriminatory employment situation for disabled people.

Federally mandated mass transit is not only *not* being enforced, it is being discarded as a concept in the face of a backlash caused by the current economic recession. But disabled advocates continue to fight for mass transit, realizing that lack of mobility condemns the disabled to the bottom of the economic scale. "Belt tightening" in the face of an economic crisis is virtually impossible for disabled individuals. They have no "luxuries" to give up.

### 1980 U.S. Census

Disabled leaders are gravely concerned that the census data currently being collected is not going to reflect the numbers of disabled people in America. Advertising for the census was not captioned for the hearing impaired. Disability is not effectively screened in either the long or short forms. The census is important because funding appropriations will be made on the numbers recorded, and Federal funding is a necessity for service organizations, given apathy of the private sector at large.

### Section 503

Some mention should be made of the existing mandates against employment discrimination. Section 503 of the Rehabilitation Act of 1973 states that any contractor or subcontractor receiving at least $2,500 from the Federal Government must have an affirmative action hiring practice towards the disabled. In contrast to Title VI, which applies to other minority groups, section 503 does not make any recommendation to the private sector about employment of disabled individuals. So far, attempts to include disabled people under Title VI have failed.

The problem with 503 is, again, enforcement. According to the *Wall Street Journal*, less than 0.1 percent of all affected contractors have filed affirmative action plans. State agencies such as the fair employment practices commission are charged with monitoring compliance, but cases may take from 9 months to 3 years to process.

## Recommended Action

As should be evident by now, the American system denies disabled people equal opportunities for employment. Many of the agencies that are specifically designed to promulgate equal rights for disabled people contribute to the problem. Because there is no interagency coordination, each agency spends much of its resources trying to compensate for the damage the others have done. Possible solutions include: (1) increased interagency cooperation coupled with an affirmative action policy for hiring of disabled people; (2) stepped-up enforcement of existing civil rights legislation; (3) creation of new legislation; (4) reforms within the agencies; and (5) most important, increased advocacy by disabled individuals who have received services in a holistic environment.

Without interagency cooperation, many programs are doomed to failure and noncompliance with civil rights legislation. For example, a high proportion of learning-disabled and mentally retarded children are ending up in correctional institutions. Because the child does not have a parent to advocate for him or her, the child ends up in a correctional institution where the goal is correction and punishment. There is virtually no communication between the correctional, the educational, and the rehabilitative systems. The child is certainly being deprived of an "appropriate" education.

To prevent these situations, very clear interagency arrangements need to be made to provide service delivery. Turf battles will continue between departments unless State and local leadership demands joint service plans. There have been some strides in this direction in services for disabled children, for example, in Florida, Louisiana, and North Carolina with the establishment of interagency guidelines and rules.

Current legislation must be enforced. We suspect that many politicians have been hesitating in an attempt to judge the extent of the supposed economic "backlash" against disabled people's civil rights. We need a firm commitment from all levels of government for enforcement of and adequate appropriations for existing legislation.

This is not the place to display the fallacies of the "How Much for the Handicapped?" cost dispute. Suffice it to say that for every dollar spent on rehabilitation an estimated $5–$70 is returned to the government in the form of taxes, increased earning power, etc. The cost of segregation is high.

But cost is not the point. The point is that recent legislation secures the civil rights of disabled people. Rights are guaranteed by the Constitution and can never have a price tag placed on them.

We urge officials of the Office of Civil Rights to monitor all agencies for failure to enforce civil rights legislation for the disabled. For example, the recent attempts at weakening 504 transportation mandates for accessibility will seriously affect the civil rights of disabled people.

Among suggestions for new legislation are: (1) a birth-to-death system of services that would allow delivery of services at the onset of disability; (2) an inclusion of "significant others," i.e., parents and guardians, as recipients of psychological and financial support systems; (3) national medical insurance for all Americans, etc.

Existing social service agencies should improve communication between themselves and disabled individuals. To make simple communication possible, all offices of agencies must do five things: (1) they must install a TTY line for the deaf; (2) they must have at least one staff member who can communicate fluently in sign language; (3) until accessible public transit is a reality, they must be prepared to meet same-day transportation requests for all disabled persons who have business with the office and cannot use public transit; (4) they must use braille and large print or tape cassettes for communicating with visually-disabled persons by mail; (5) they must develop the patience needed for oral communication with persons with speech disabilities. When these conditions are met, the increased communication will foster greater interaction and greater understanding between disabled and nondisabled persons. Consequently, the system would become more responsive to disabled people and the social service delivery system more effective.

In order for the Nation's health care agencies to help make equal the employment opportunities of the disabled with the nondisabled, they must adopt cost-control devices that encourage the disabled to work, but don't endanger the disabled person's health. Most importantly, these cost-control procedures must encourage flexibility while maintaining accountability. All health insurance agencies must pay 100 percent of the purchase price of all medical services and goods. Provision should be make for the prompt replacement of wornout or damaged equipment. The goods and services handled by health maintenance agencies are a prerequisite to even an attempt to look for employment and are necessary to basic independent living.

In the final analysis, disabled people themselves must protect their rights. But they can only do this if they have access to a holistic service delivery system. Disabled people are in a double bind. Their struggle to fight discrimination is hampered by the lack of services to meet their needs for daily survival. Without services, civil rights laws aren't worth the paper they're written on. If we don't have attendant referral, if we don't have money to hire attendants, if we don't have assistance in finding accessible housing, if we don't have wheelchair repair and accessible transportation, we don't have civil rights for people who can't get out of institutions to exercise those rights.

We believe that independent living programs, which provide noninstitutionalized coordination of services and peer support, have been crucial in the struggle against segregation and discrimination. Through these programs, the concept of disabled people controlling their own lives rather than being taken care of has become part of the service delivery system.

Independent living does not necessarily mean living by yourself or doing things totally by yourself. Rather, it means having as much control as possible over your environment. It means knowing what you need and making decisions and meeting those needs.

For example, if you can get out of bed and get dressed by yourself but it takes you 3 hours when, with the help of an attendant, you can do it in half the time, then using an attendant frees your time and energy to do other things. You don't have to struggle every morning to get yourself out of bed in order to be independent. As long as you have control over your attendants so that you are making decisions about when you get up, what you'll wear, what you'll eat, etc., then you are making choices.

Independent living programs are consumer-controlled, noninstitutional providers of services and advocacy. They enable disabled people to take control of their own lives. In turn, these programs, under the control of disabled staff, can affect the larger institutions and systems that have controlled and discriminated against disabled people. It is for this reason that we include the establishment and strengthening of independent living programs as a recommendation for remedying the patterns and practices of discrimination in the social service agencies.

The rehabilitative effectiveness of independent living programs has aroused much interest and has led Congress to call for the establishment of independent living programs throughout the United States. Unfortunately, Congress has not appropriated sufficient funds for such development.

This paper has been intended as a cursory glance at some of the patterns and practices of discrimination faced by the disabled with respect to various social service agencies and the effect these social service delivery systems have on opportunities for equal employment. Some recommendations have been made in conclusion. This paper is by no means exhaustive. Its main purpose is to be illustrative of a vast and complex puzzle. Hopefully, this paper has covered a basic awareness of the obstacles faced by disabled persons and will provoke serious thought by groups throughout the country.

## STATEMENT OF JUDITH E. HEUMANN, DEPUTY DIRECTOR, CENTER FOR INDEPENDENT LIVING, BERKELEY, CALIFORNIA

MS. HEUMANN. Thank you.

What I would like to do is probably much more than a summary of the paper, since I think the paper is pretty much self-explanatory and my presentation will basically be highlighting what was presented and will give you some additional information about a number of the problems that disabled people are currently facing in the social service area.

CHAIRMAN FLEMMING. If you would take about 15 to 20 minutes, that would be fine.

MS. HEUMANN. Good.

I belong to the largest civil rights group in the country. The statistics, while they vary, go anywhere from 35 million to 47 million and up, and yet our civil rights group still has not yet received the status within the nondisabled community as a civil rights group representing a body of oppressed people in this country who have thus far been unable to achieve our place within this society, based on the failure to provide appropriate services and probably most importantly based on the failure of people in this country to believe that disabled individuals are in fact people who have the ability to achieve and have the desire to achieve. I think it is still all too common that disabled people in this country are perceived of as people who are sick and who are in need of being taken care of, as opposed to people who have different needs and whose needs, in fact, can be met, which will allow us to achieve our goals.

We come from many backgrounds. We are black, we are white, we are Chicano, we are old, we are young, we are Asians. We are mentally retarded, mentally ill. We have multiple sclerosis, muscular distrophy, heart disease, cancer. There are more labels than I could possibly even list to you, and you probably wouldn't know all of those labels. But the labels somehow seem rather unimportant, inasmuch as they merely characterize a medical diagnosis, and in that sense they often fail to address the needs of the individual.

People are afraid to look at disabled individuals. People are afraid to touch us. People are afraid that they are going to catch what we have. Some people probably would do well to catch what we have, although many people would feel that this would be an inappropriate statement to make.

What I would like to do very briefly is to give you a summary of my personal development as a person because I think it basically allows you to see that, although I was born in 1947 and had polio in 1949, the service delivery systems and the ability for disabled people to achieve have only changed moderately over the past 30 years.

I had polio when I was a year and a half old. I was born to parents who were immigrants. I think the first thing that we need to look at is what kinds of services did my parents get and what kinds of services would parents get today. Basically, we are talking about very little. There are very few places where parents of disabled children can get appropriate information on what it means to have a disabled child, not only from a medical perspective, but from a civil rights perspective. What are parents' rights? What are their rights as parents and what are the rights of their children? What can their children be afforded?

My parents basically struggled through the system and pushed the system to allow me in, because the system was not very willing to let me in. I was taken from one hospital to another, dealt with by doctors whose medical diagnoses were always very interesting, from, "Yes, Judy is going to be able to walk," to, "No, Judy isn't going to be able to walk." My parents finally decided that they were going to work with me to assist me in achieving that which I could and to supplement that which I physically wasn't going to be able to do for myself.

One very interesting scenario that runs through my story and throughout the story of many disabled individuals is the fact that there is a desire on the part—and I don't want just to label the medical profession at this point, although they are certainly integrally involved in this—that one becomes more "normal" (whatever that means) when one is walking. If one is not walking, one is not "normal." I think you only need to look at the 1970 stamp that was put out by the United States Government entitled, "Hope for the Crippled," which was a stamp of a person seated in a wheelchair rising to a standing position; that, to me, indicated what people thought of disabled individuals in a wheelchair—which is a more visible thing, which is why I am sure they selected a wheelchair—you are not considered to be a whole person. However, once you are in this standing position, that is normality.

My parents were not given appropriate information in relationship to equipment. They were instructed not to allow me to get an electric wheelchair because an electric wheelchair would mean that I would become more dependent and it was important for me to develop physically.

Now, it is important for you to know that I am labeled as a quadriplegic, which means I have limited use of my arms and no use of my legs, and as I got older it became more interesting to see that this desire on the part of some to make me walk was not only impossible [to fulfill], but also was detrimental in allowing me to develop as a "normal" person. Because what the denial of certain equipment meant to me was that I was not able to keep up with my peers, and at this point I am talking about people in my age group, both disabled and nondisabled. My nickname with my friends was "The Turtle." I used to use crutches and braces, and from a medical perspective it was fine for me to use crutches and braces for therapy, but from an ability to integrate, it would have taken me 20 minutes to walk from here across the room. If I fell, I couldn't get up. I couldn't sit down in a chair by myself. I couldn't stand up by myself. But there was never a division between when therapy was appropriate and when, in fact, it was in my best interest in terms of making sure that I was going to be able to be part of society.

When it came time for me to go to elementary school, I was denied admission into the local public school because the principal informed my mother that I was a fire hazard. Although this is outlawed today, there are still cases all across the country of children being denied admission into schools based on disability.

I was on home instruction from first grade to the fourth grade, for which a teacher came to my house two to three times a week with a grand total time of 45 minutes to an hour and a half. Obviously, there was no social integration going on. Academically, my parents and my brothers were teaching me at home, but socially I was not getting the kind of integration that is undoubtedly one of the most important things one gets in a school setting.

When I was in the fourth grade, I was integrated. I was integrated into a segregated program. I was integrated into a program for orthopedically disabled children who were not ambulatory, and that meant that they couldn't walk up stairs. I went to school in the basement of a building, which I then went to and taught at later on. "The kids upstairs," as we defined them, were the nondisabled children. We had no integration except every Friday for assembly. That was the significant integration that went on.

I was the first to graduate from elementary school from my special classes and went to high school only because my mother and a number of other mothers fought the system to allow us into high school. At that time, if you were in a wheelchair, you went back to home instruction; if you were in a wheelchair, you couldn't go to school.

One of the most dramatic things for me in high school—and I think it is absolutely fair to say that this is true for children today—is the fact that coming from a segregated environment into an integrated environment was very difficult. There was no introductory period. There was no conceptualization of the fact that having been in classes with 10 to 12 children and then being thrown into a school with 32 children, going from class to class—again, I didn't have an electric wheelchair—made things extremely difficult.

When I enrolled in high school—I grew up in New York—I signed up for Spanish because, as you know, there are many people in New York who speak Spanish, and it seemed to me to be the most relevant language to take. However, in my special homeroom, which was just for disabled kids, there were four of us taking languages and three of the students were taking French. When I went to my Spanish class, I was really afraid of being in a class with so many nondisabled children and having to go from one room to the other without any aides. (There were no aides in the school to assist you.) So I changed the next day from Spanish to French because I was able to go to French with my three disabled friends. I don't speak French today. There weren't a lot of people in New York at that time to speak French with, and it really is an important issue to look at in relationship to (1) the importance of integrating disabled children, which I absolutely believe in, and (2) the importance of making sure that the integration is done in a way which best meets the needs of the children and not the needs of a system which all too frequently is not really out to provide appropriate services.

When I graduated from high school, I wasn't allowed to go on the stage to receive an award because the principal decided that the three steps up to the podium was something that I shouldn't have to go through. Actually, he didn't want me up on the podium because I was in a wheelchair. Finally, he agreed to allow me up on the stage, but only if I would sit in the back and not come to the front.

When I went to college, I went to a very small school. The counseling that I got in college is definitely something that needs to be pointed out because I would like to say that things have significantly changed between 1963, 1964, and 1965, when I was deciding to go to college, and today; but I don't think—and I think you could take a poll of people in the room—I don't think that things in fact have changed dramatically.

I made my decision to major in speech pathology in the fifth grade, and that decision was based on a speech therapist in my special classes

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telling me that I was very good in working with children who had speech difficulties and that I would be able to get a job in a hospital and, therefore, she thought that that would be a good vocation. I went to the department of rehabilitation and took a series of IQ tests and other batteries of tests. No one really ever sat down and explained to me what the job market was like, what jobs existed in 1965, what jobs would exist in 1975, etc., etc.; so that was the way I made my choice.

When I went to college, a significant number of the disabled women who were on my campus were majoring in either speech or in social work because in social work you could also get a job in a hospital, so you were very secure.

When I went to college, it was an enlightening experience for me and probably the beginning of my getting much more actively involved in what I would define as the civil rights movement, the political movement for disabled individuals. There was no disabled students' program on campus, and there were steps into the dormitory that I had to go to. When we got the college campus to be willing to do a story on how the campus needed to make itself accessible, the head of the psychology department decided that it would probably be better for disabled students not to go to school at this particular college because it must be too traumatizing. Therefore, instead of looking at the issues of architectural barriers, which on this campus I must point out were relatively few—it was a campus of one square block; there were two steps into the dormitory which took 2 years to be ramped. There were no major architectural barriers.

There were, however, significant attitudinal barriers. There were professors who didn't want disabled students in their classes, and until there was a disabled students' program, it was very difficult to get yourself admitted into some of these professors' classes. It wasn't based on the fact that you weren't qualified to get into the class, because obviously you were—you'd be accepted into the program; but the professor had the ability to keep you out of the program, and if you have had a chance to review my paper, you will see that a recent study which was done in California of the university system shows, in fact, that there still are colleges in California that are experiencing the same kinds of problems where professors are, in fact, excluding students from classes and/or departments that are not allowing students to become enrolled in those classes based on disability, not based on the ability to perform whatever the academic requirements would be for the class.

I decided in college that I wanted to major in education and that was both a statement that I wanted to work with children, and it was also a statement that in the New York City school system with 70,000 people working in it there were no disabled people who had been accepted as teachers, who in fact became teachers and were disabled at the time they were certified. So I took appropriate courses, and, at that time, there were not enough teachers to go around and so you only had to take up to 12 credits and you didn't have to do student teaching. So I never experienced problems of student teaching. However, when it was time for me to take my exams, I passed my oral exam and I passed my written exam and I was failed on my medical exam. I took my oral exam and my written exam and my medical exam in buildings that were physically inaccesible—I had to be carried up and down the stairs to get in. When I went for my medical exam, I was greeted by a doctor who informed me that she had never had to give someone like me a medical exam. In my younger, youthful years, my response to her was I had every intention of suing in the event that I was not given an appropriate medical evaluation.

I obviously failed my medical evaluation, and when I finally got notification as to why, it said, "paralysis of both lower extremities sequela of poliomylitis." I ran to the dictionary to find out what "sequela" meant—I thought it was something special—and found out it meant "because of." Subsequently, I was able to secure attorneys. However, at that point, I had tried to get the ACLU to handle the case. The ACLU informed me that this was a medical decision and, therefore, no court would be willing to look at the case. When I tried to explain to them that, in fact, it was a civil rights issue, that it was a denial of a job based purely on a medical diagnosis, not based on my ability to perform the job, they didn't even want to interview me.

Some of the relevant questions that the doctor asked me—she wanted me to show her how I went to the bathroom, and I remember telling her that unless it was going to be a requirement for me to teach elementary school children how to go physically to the bathroom, I didn't see any relevance in my showing her how I went to the bathroom. I was no longer at this point using crutches and braces. She told me I was to come back for a second interview and at this interview I was to please bring my crutches and braces and to be wearing them. When I told her that I would not be safe to hire using my crutches and braces, she informed me that, nonetheless, I was to come back and show her how I could walk one or two steps.

When I came back for my second medical interview, I came back with an advocate. The advocate was not allowed in the room, but this time there were two male doctors and this woman doctor and myself, and it was written down in my record that I was insubordinate because I failed to bring my crutches and braces.

The long and the short of that story was that I was fortunate enough to get Constance Baker Mottley as the judge on the case, who was the first black woman judge appointed to the Federal district court, and she basically made it clear that she was going to keep the case and that it looked like she was going to rule in our favor. So they settled out of court. Then I couldn't get a placement. Finally, I was placed in a school that I had been a student in, and that was a very interesting experience because it really brought home to me the problems that were going on in special education.

As a student I had particularly felt—and I couldn't articulate it that clearly—that the goals of the teachers for special education children—and I am not saying this is true for all special education teachers—but that the goals of many of the special education teachers were not the same goals that they had for nondisabled children, that there was a much lower expectation that disabled children, in fact, were going to be able to achieve. So, consequently, the quality of education that went on was really substandard.

Now, when I went into the system—during my court battle I had been getting a lot of publicity and had been speaking out a lot on the problems—a number of the teachers in the school considered me rather a pariah because of my statements about what I felt were the problems in special education. I think many of those problems, as I said, are still going on today. I think that special education teachers have not had the kind of training they need to ensure that disabled children receive appropriate education, and I think, quite frankly, that one of the big problems going on in special education today is that special education teachers are terrified at the thought of teaching nondisabled children. So when we look at the issue of integrating nondisabled children into regular classes with the prospect of special education teachers going into the regular classroom, I think there is a real problem because those teachers are really afraid of moving into the regular mainstream—least restrictive educational environments.

The scenario in all of this, I think, is to point out that the services that have been available to disabled people in this country have been spotty, have been inferior, have not allowed disabled people to move into the mainstream of life. One of the remedies to this problem that has been developed across the country is what are being called independent living programs. These are programs that in many cases are run by disabled individuals, and we are beginning to develop a whole range of services which look at the disabled individual as a whole person so that the kinds of services that are being provided are being provided not only to the disabled person, but to the significant others, whether it is a husband, a wife, siblings, mothers, fathers. The services range from attendant care (where we are able to assist others in finding people who can come into their homes to assist them in getting out of bed, in getting dressed, in moving about in the community, and driving a vehicle, if that is necessary) to assisting them in finding actual placements in housing in the community.

One of the big problems that still plagues disabled people in this country—and when I talk about disabled individuals I am, of course, also including elderly individuals—is the problem of institutionalization. The number of institutions that exist in this country and the number of disabled people who are placed in institutions in this country is rather appalling. The cost to the taxpayer and the deprivation to the disabled individual is something that needs serious consideration. In California, it costs approximately $40,000 annually to warehouse a person in a State institution.

The services continue to go on to try to move people out of institutions, to move people into community living arrangements; by that I mean people living in houses, people living in apartments, people choosing where they wish to live in a community, in the same way that nondisabled people choose to live in their community.

We assist people in making sure their equipment can be maintained. Equipment maintenance in this country is pretty appalling. When I lived outside of California, it could take anywhere from a week to a couple of months to get a wheelchair fixed. Obviously, if your wheelchair is the equivalent of your legs and you broke your leg and someone said, "You're going to have to wait 1 or 2 months to get your leg fixed," that wouldn't be a very acceptable approach to the situation. But as far as the ability to get equipment repaired in this country, there is not very much going on in a very organized way.

The comment was made yesterday that when blacks were denied the opportunity to utilize transportation, it was simple: You couldn't sit in the front of the bus because you were black. Today, what goes on in the area of transportation and other needs of disabled individuals is that we study why it is not going to be effective for disabled individuals to use the system. In the case of transportation, we see that there are millions and millions and millions of dollars being spent by the Federal Government to show why disabled people, in fact, should not, cannot, will not, and do not want to use public transportation.

The reality of the situation is that disabled individuals want to be able to use everything that exists within communities, that we want to be able to be mainstreamed, that we want to be able to become an integral part of this country, that the charitable approach, which has long existed in this country and around the world, which basically allows the Jerry Lewis telethons to go on, allows the Easter Seal telethons to go on, etc., etc., telethons which in fact do not allow for pride within disabled people, but rather continue to prey on the fears of nondisabled people becoming like us—"give money so that you don't have one of us." The government really has allowed these kinds of programs, telethons, to continue because of its failure to provide appropriate services.

So that I think if the Commission can make some strong recommendations which begin to deal with the needs of disabled individuals—and for sure in this case disabled people are not the only ones plagued with a fragmented system that does not employ the constituency that needs to be employed in order to provide appropriate services—in our case nondisabled people continually provide services to disabled individuals—the recommendations would be welcomed in the disabled community, and if the recommendations would be heeded by other representatives in the government, it would be a miracle.

Thanks.

**CHAIRMAN FLEMMING.** Thank you very much.

[Applause.]

**CHAIRMAN FLEMMING.** The next panelist is Mr. Rudy Frank who is the Acting Director of the External Technical Assistance Division in the Office for Civil Rights in the new Department of Education. Unitl May 4 Mr. Frank was Chief of the External Technical Assistance Branch in the Office for Civil Rights in HEW. This office provides technical assistance in implementing section 504 of the Rehabilitation Act of 1973. It also dispenses approximately $6 million in contracts to organizations, public officials, disabled persons, and service providers such as schools and hospitals.

Prior to his work in the Department of Education and HEW, Mr. Frank was responsible for developing disability policy in the Office of Policy Planning and Evaluation in the Community Services Administration.

We are very happy to have you with us, Mr. Frank.

## STATEMENT OF RUDY FRANK, ACTING DIRECTOR, EXTERNAL TECHNICAL ASSISTANCE DIVISION, OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION

**MR. FRANK.** Thank you very much.

I should, by way of further background about myself, mention that, although I am a disabled Federal employee at the middle-management level, it was only in the last 4 years that I have become professionally involved in disability issues. Prior to that time I worked with the Office of Economic Opportunity on program planning issues and was one of a relative handful of disabled Federal employees at my level. I mention that because I think one of the things that Judy Heumann touched on in her verbal commentary today and has articulated in detail in her excellent paper is that the service mixes in social service programs are affected by the service providers in the first instance and only secondarily by the needs of the service recipients. That is evident in senior citizen feeding programs around the country, where we have lots of programs that give people congregate feeding 5 days a week. I don't know about you, but I eat 7 days a week. It is even more evident in the social service programs that are especially targeted on disabled individuals. Let me tell you what I mean.

We have a Federal-State vocational rehabilitation system that costs $2 billion per year when you include the other agency add-ins. If you call a vocational rehabilitation office in whatever city you happen to be in, like here in D.C., and say, "I'm a disabled person. I just got here. I got out of an institution. How do I find housing that is accessible?" they will say, "We have no idea. We don't do that sort of thing." And they don't.

If you call them and say, "I'm trying to get on SSI for temporary income. I'm a disabled person. I'm sure I qualify, but they say I don't. How can I get help?" they will say, "We don't know how you can do that."

If you call them and ask about emergency wheelchair repair, because you are stuck in a broken electric wheelchair at the corner of 14th and whatever and need to know how you can get emergency wheelchair repair, they don't do that sort of thing. They have no idea who does.

This is true in most of the East Coast cities and in almost all States. In the West where independent living projects have sprung up, you have a different phenomenon. Independent living projects are projects planned and organized by disabled persons funded through a catchall variety of funding services and very recently being funded by the Rehabilitation Services Administration in a very small way.

Where disabled people are actually involved in the planning of the programs and involved in the administration of them, there is a very different kind of service mix. There, you have available pools of attendants to help people who cannot deal with the basic needs of personal care. If you have just been in an institution and come out and need somebody to help you get dressed and get out so you can go to work, they have that kind of service available. They don't say, "It's not my department. We don't do that sort of thing." They *do* have emergency wheelchair repair. They do have on a very, very limited budget a fairly creative way of scanning the housing market, which we all know is tight, and trying to find out where the accessible houses and apartments are and trying to work a deal with the local housing authority for reserved slots for disabled persons.

The intervention of disabled persons in the planning of these local programs has made a world of difference in the kinds of services provided by those programs. I think that is one of the points we have to consider as we look to the planning and delivery of national programs.

When you look at the history of the Federal Government's lack of success in planning for Indians without involvement by the Indians, as witnessed in the old BIA, there is an analogy. You had a lot of non-Indians in Washington planning and operating programs for Indians. The record of that program is laid out in the grim statistics that you are all familiar with involving the Indian population.

It wasn't very many years ago when there were virtually no black or Hispanic officials at the middle-management or senior-management levels in the Federal Government in social programs. For example, very few minority executives were involved in planning for the old public housing programs although these programs dealt extensively with minority populations. While representation of women and minority-group members is still less than it should be at the decision-making level in most Federal programs, there has been real progress under leaders such as Pat Harris. However, this pattern of progress is not true as regards disability programs, and I think we need to be concerned as to why it is not.

As Judy mentioned, there are 35 million disabled persons in this country. Disabled persons are, in fact, the largest and most diverse American minority group. They overlap, by the way, rather drastically with other minority populations. The incidence of disability among black Americans, for example, is twice the incidence among white Americans.

But if you look at the management ranks in the service-providing agencies, be they Federal or State or even local, you don't find disabled folks making decisions or recommending solutions. Why is that so? Well, I think it has to do rather more with values in how disabled people are perceived than with our abilities to do a job or even the question of whether or not we are qualified.

With regard to the qualifications question, the vocational rehabilitation system does do one thing. It sends thousands of us to college—that system sent me through college, which I appreciate. But even though thousands of disabled people finish college, they also remain unemployed after a very expensive, federally financed undergraduate and graduate training. They are out there; they are qualified, but they don't get hired.

The Federal Government has created something called a schedule A appointment so that severely disabled persons could be hired without any kind of reference to a civil service register or any kind of competition. So the argument that "Civil service procedures prevent us from hiring" is clearly invalid, because there isn't that smokescreen to hide behind. It is not a matter of merit competition and civil service registers, because there exists an authority to go around those registers. There exists, as a matter of fact, a mandate, an unfulfilled legal mandate, to take affirmative action to hire and upgrade disabled persons in the Federal Government.

Many States have parallel procedures in their legislation, but the affirmative action somehow has not been happening. I urge you to look at the reasons why. I think the reasons are in good part attitudinal.

We have, as I indicated, a value problem in whether disabled people are perceived as the kind of people you would want representing us, the public, in making decisions and managing programs. We have the same kind of value system shown in all sectors of public dialogue. Judy mentioned mass transit. The one-time cost of making the entire American mass transit system accessible to disabled persons might be as much as $6 billion, spread over a 30-year period. It might cost that much. That figure of $6 billion is, by coincidence, the annual budget of the space program.

Now, disabled Americans don't necessarily want to ride in a space shuttle, but they do want to ride the buses and subways to get to work like you and I and everybody else, and right now they can't. Somehow a one-time expenditure to help disabled persons is unthinkably inflationary, while an annual expenditure to run the space program is not inflationary. So this is a question of values, and I hope that the Commission would add its voice to that question, in considering how America makes choices which affect the lives of disabled people.

One other point I would like to make. A lot of the problems we are seeing, as Judy mentions in her paper, are solvable under this administration. Section 504, which was passed in 1973, provides ample authority for Federal agencies to deal with all those questions. Currently, only 8 of the 28 Federal agencies have final regulations on section 504. This is some 7 years after the law was passed.

President Carter just recently committed all government agencies to issuing regulations on section 504 by the end of December 1980. I would hope that the Commission would monitor this process and would hope you would look in particular at the need for a technical assistance effort to help grantees and disabled persons understand what their responsibilities and rights are. At the Department of HEW, we spent over $5 million a year for the last 3 years in a process of providing assistance to school administrators and hospital administrators and disabled citizens in determining specifically what has to happen to those specialized programs to comply with the rather general requirements of the law.

I am not sure that the government understands that yet. The agencies that I have talked to are not planning to reserve technical assistance monies, and I think it is important that they do, because the law is not self-enforcing and the grantees, the local program operators will need a lot of help in figuring out specifically how to make their programs comply.

I mentioned the $5 million per year for HEW. That sounds like a lot of money. By comparison, we are spending some $44 million a year on technical assistance on school desegregation. That is good. It is important that we continue doing that.

That basically is it.

**CHAIRMAN FLEMMING.** Thank you very much.

[Applause.]

**CHAIRMAN FLEMMING.** Our next panelist is Ms. Yetta W. Galiber. Ms. Galiber is responsible for the administration of the protection and advocacy system for the District of Columbia. The center pursues legal, administrative, and other appropriate remedies to ensure the protection of the rights of disabled persons. She is active in many community organizations involving the handicapped and has done several studies and research projects on handicapped issues.

I would also like to note the fact that she is a member of the Advisory Committee to the U.S. Commission on Civil Rights from the District of Columbia.

We are very happy to welcome you.

## STATEMENT OF YETTA W. GALIBER, EXECUTIVE DIRECTOR, INFORMATION CENTER FOR HANDICAPPED INDIVIDUALS, INC., WASHINGTON, D.C.

**MS. GALIBER.** Thank you very much.

Ms. Heumann's paper provided a clear overview of the discriminatory practices in the delivery of social services to handicapped individuals. In her paper Ms. Heumann mentioned the fact that, as with ethnic minorities, deep attitudinal fears color the interaction between the disabled minority and the rest of America. This observation leads into the concern I wish to address regarding the problems of ethnic minority handicapped persons and also a discussion of the services of the Information Center for Handicapped Individuals.

We in the United States of America are faced with a dilemma of staggering seriousness. Our ethnic minority handicapped citizens are suffering, are being ignored, are dying physically and spiritually. A brief glance at the contours of our national patterns would at first serve to support the belief that we have only infinite reverence and tenderest compassion for our handicapped citizens. Yet, upon closer examination, we see that too many minority handicapped persons are hungry, unclothed, unemployed, unsheltered, and completely unaware of the better life which is their right.

Daily we see them by the hundreds in magazines, newspapers, on television; their eyes and the overpowering conviction of their circumstance cuts clearly through to something deep within us. We are made uncomfortable. We search in ourselves for something that will alleviate the guilt that we feel. Perhaps if we could talk to them, if we could say, "Look, here's how it is: Nothing's guaranteed. Let's try to understand. Try to hang on to survive. One day we will reach out to you," and perhaps, through some extraordinary effort, we could make some of them understand, could make some of them continue to wait patiently for the day of their self-deliverance. Yet, we know some of them are limited in the use of their very tools of understanding.

In the last two decades, in an effort to express our growing concern for neglected persons, our society has thrust itself deeply into the area of personal rehabilitation. This concern has been evidenced nowhere more strongly than in legislation resulting in programs designed to help handicapped persons. Regulations to these laws clearly require outreach so that ethnic minorities can share in these rights and have their ways of life respected and incorporated into institutional and social service programs.

However, as a result of the historical climate and ever-present racism, they are overrepresented in every statistical indicator of socioeconomic and health ranks, and remain at risk with continuous and periodic episodes of acute anxiety attacks, depression, and personality disorders in an attempt to survive. Members of racial-ethnic groups are isolated from the mainstream of the service delivery systems and experience great problems in locating and accessing services. Social service professionals traditionally show concern for the problems of minority handicapped persons, but more often than not this concern has been patronizing and self-fulfilling of the needs of the majority establishment rather than that of minorities.

Advocacy and outreach are essential if the necessary program changes are to be made to ensure services for ethnic minority handicapped persons. Information is power. Most minority handicapped people do not have the information translated to them in understandable terms. This contributes to little or no participation of minority families in service planning due to limited knowledge, attitudinal constraints, and economic barriers.

From a national study of minority participation in the developmental disabilities movement conducted by New Dimensions in Community Service in San Francisco, California, I quote: "It is essential that service agencies make a special effort to recruit minorities into the planning and decisionmaking processes."

A review of the literature dealing with service providers reveals, for example, that Mexican American children are enrolled in special education classes at twice their proportion in regular classes. Black children are placed in programs for the educable mentally retarded at three times the white rate. Among some Native Americans deviance is accepted. The child born with a handicap is not evaluated negatively. It is assumed in these groups that the child has the prenatal choice of how he wishes to be born and, if handicapped, is so by choice. Twenty-five percent of Spanish-speaking people are below the poverty level, 15 percent are unemployed, and the dropout rate from school ranges from 50 to 80 percent with educational underachievement being an universal concern. These inequities and misconceptions are to a large extent due to the lack of information.

It seems appropriate at this time to discuss the programs of the Information Center for Handicapped Individuals in the hope that its unique total and personal response to handicapped persons will inspire its replication in other States.

In 1969 the U.S. Office of Education, Bureau of Education for the Handicapped, funded the Information Center. The center's compilation and revision of resource information has resulted in the publication of the *Directory of Services for Handicapping Conditions,* the *Directory of Social Services for the Spanish-Speaking Population, Here Comes the Sun,* an annual directory of summer programs for handicapped children, and *Access Washington,* a guide to metropolitan Washington for the physically disabled. These publications are distributed to universities, hospitals, local and national government agencies, schools, parents, and other interested organizations.

The scope and depth of the Information Center for Handicapped Individuals services of the past year have been developed around the principles of the center's advocacy role in the District of Columbia and metropolitan area. Its track record is in providing information, referral, follow-along, outreach, linking the handicapped population with resources and services, and its forefrontness in identifying the comprehensive needs of handicapped citizens. This resource information, combined with the results of area statistical studies, enables the center to document unmet needs and gaps in services.

In 1971 the District of Columbia government recognized the center as a viable community-based repository of information and services and is to date funding its operation. The mayor of the District of Columbia designated the center as the protection and advocacy system for developmentally disabled persons on August 1, 1979. The Vocational Rehabilitation Services Administration has contracted with the Information Center to serve as the city's client assistance project. Staff serve as ombudsmen on behalf of rehabilitation clients and client advocates.

The Information Center, under contract with the Developmental Disabilities State Planning Council, recently completed a study conducted in two phases. Phase one consisted of identification of persons with developmental disabilities in the District of Columbia and the identification of services available to these persons. Phase two was the determination of public knowledge of and attitudes toward persons with developmental disabilities.

I believe that the findings of phase two of the study can apply to the entire country, and I would like to share the findings with you. An exhaustive examination of the data generated in phase two identifies the problem. Although there are many persons in the community who evidence positive attitudes toward developmentally disabled persons, a substantial portion of the population continues to harbor negative attitudes, essentially based in myths and age-old stereotypes, refuted repeatedly by researchers and program practitioners. These negative attitudes are manifest in discriminatory behaviors toward developmentally disabled persons in educational programs, employment, residential pursuits, and other vital facets of their day-to-day lives.

Philosophically, our society has moved away from the notion that institutional care and confinement is the most appropriate option for developmentally disabled persons. While it is encouraging that 70 percent of those participating in this study agreed that institutional care is not generally necessary, it is distressing that 30 percent continued to subscribe to institutional care as both necessary and viable.

The ramifications of the negative attitudes held by these persons become ever clearer when one attempts to initiate community-based services to supplant institutional care. Resistance to the development of group homes is sufficient to establish the case for the significant negative impact that can be exerted by such attitudes.

Among practitioners in the field, gainful employment, either sheltered or competitive, has long been accepted as a realistic goal for the preponderance of developmentally disabled persons. Yet, despite the many corroborations of this fact, current data demonstrate that negative attitudes continue to persist concerning the employment potential and capabilities of developmentally disabled persons.

These attitudes were expressed significantly more by males than females, a fact which occasioned even more concern when one remembers that males continue to dominate in supervisory and administrative capacities. This significantly affects the initial employment and later job success of the developmentally disabled person. Therefore, job success for developmentally disabled persons will depend not only on effective training, but also on the existence of accepting attitudes in the employment market.

Respondents 55 years of age and older had negative attitudes to a significant degree in comparison with younger participants. It may be that older respondents have received more exposure to stereotypes and myths concerning developmentally disabled persons and thus are more resistant to change and to adopting new perceptions of these individuals.

The data further indicated that those of lower income tend to hold negative attitudes to a greater degree than those of better financial means. The attitudes evident in this group include many of the longstanding myths. These include the notion that developmentally disabled persons should be confined to institutions, are mentally ill, are more prone to criminal activity, cannot hold jobs, and cannot profit from training. The principal significance in terms of effect ties in with the efforts to develop community-based services. Negative attitudes held by this group can act as significant deterrents to the development of vitally needed services. The development of group homes and other residential programs in the community is inhibited. Mainstreaming in public school classrooms is made exceedingly difficult, and employment success of developmentally disabled persons is significantly impeded by the resistance.

Now is the time when we must embark upon a full-scale, systematic, public education program in order to enlighten the general public more effectively. Fundamental attitudinal change will occur only through enlightenment, effective information, and eradication of the ignorance that engenders prejudice and discrimination.

In closing, I strongly recommend that, since 1981 will be the International Year of the Handicapped, we in the United States of America devote the year to accomplishing realistic objectives—that one objective be promoting meaningful outreach efforts to provide appropriate services to the ethnic minority handicapped populations in this country.

Thank you.

CHAIRMAN FLEMMING. Thank you very much.

[Applause.]

CHAIRMAN FLEMMING. Our final panelist dealing with this subject of social services and the handicapped is Mr. Irving Peltz, who is presently Program Coordinator for Severely Disabled Veterans at the Veterans Administration. He counsels veterans on the benefits to which they are entitled following their discharge from military service.

Mr. Peltz has been active in veterans affairs since his disability discharge from the Army in 1945. He is a combat veteran of World War II and saw action in the North African and Italian campaigns.

We are very happy to have you with us.

## STATEMENT OF IRVING PELTZ, PROGRAM COORDINATOR FOR SEVERELY DISABLED VETERANS, VETERANS ADMINISTRATION

MR. PELTZ. Thank you.

First, I would like to bring you greetings from the Administrator of Veterans Affairs, Max Cleland, who happens to be a disabled veteran himself, severely disabled in Vietnam. He had gone through the system on rehabilitation for his medical conditions, rehabilitation for his physical conditions, vocational rehabilitation, and he knows what the system has to offer.

We of the VA are quite aware of the challenge that we have. There are now 30 million veterans in the Nation of all wars: World War I, World War II, Korean conflict, and the Vietnam era. About 2.5 million are service disabled and about 2 million are disabled with various conditions that are not due to their service, but happened since they have come out of service.

As the third largest agency in this Nation, we have about a quarter of a million employees with a $20 billion budget in order to service the veterans of the Nation and particularly the disabled veterans. We have 172 VA medical centers consisting of outpatient clinics and hospitals with inpatient treatment, general/medical surgery, and research. We have offsite 101 satellite clinics around the country and 58 VA regional offices. They are all directed to service the needs of veterans in this Nation and particularly the disabled veterans, his dependents, and survivors.

A majority of the veterans returning from the wars served, returned to their home communities, picked up their lives, and successfully readjusted and entered the mainstream of society. However, we are concerned in reaching those who have not adjusted well. It is clear that smaller target groups of service disabled, educationally disadvantaged, unemployed, incarcerated, minority, aged, and those with psychological stress disorders need our special attention.

I have given you target groups and the reason I have is because when we talk about disabled, the disabled can be unemployed; the disabled can be in need of psychological services; the disabled can be, and we find them, incarcerated; many of the disabled are aged. Therefore, I thought if I would give you an outline of our outreach efforts to reach these target groups to provide the services they are entitled to, that maybe it would give insight as to what we are trying to do and how we are trying to service the disabled veterans of the Nation.

When I say "disabled veterans" or "veterans," I am talking about those citizens who have discharged their obligation of citizenship and served their country honorably in the Armed Forces of the United

States and then suffered an injury, disease, wounds, or a disability because of such service.

We talk about civil rights. I am going to talk about part of the civil rights, what we call veterans rights. This is contained in Title 38, U.S. Code. The veteran has a right to know about the benefits and services that are available to him, those benefits that he has earned because of his military service. But if he is to receive these Federal benefits and veterans rights, he has to know, because the one thing we all must recognize, with all the laws granting benefits that we talk about and all the things that we say should be done for our returning veterans, it is not automatic. None of the benefits are automatically provided. Therefore, that disabled veteran has to initiate a claim for each benefit. He has to file an application. He has to request. And if he doesn't, no matter how severe his disabilities may be, no matter how well he has served his country, he will receive absolute zero, nothing. Therefore, we are obligated, with all the laws we say we have on the books and all the benefits that a grateful Nation has provided for these citizens who did discharge their obligation as citizens—we have to in some way reach them.

Therefore, I have a short outline of the VA's outreach efforts to reach and serve these special target groups of veterans and help them make a good readjustment. VA's outreach begins for the service disabled before his military service ends. Through liaison with the military services, the VA provides assistance in training to their counselors on veterans benefits in order that they may conduct certain separation briefings to let that serviceman know before he comes home about the Federal benefits and the VA services that are available to him.

Direct assistance is provided to those servicemen patients in need of vocational rehabilitation counseling at the military hospitals. Again, this is before their separation. Motivational visits are set up and followup contacts are made within 60 days after their separation from service, there again, in order to motivate the disabled veteran to take advantage of VA's vocational rehabilitation, education, and training programs. Followup contacts are made for those disabled veterans who may have entered the program and dropped out and, for some reason, had not completed their rehabilitation.

We developed a number of special projects in cooperation with the Department of Labor and, in the private sector, the National Alliance of Business, and I would like to highlight a few of them. The VA has mailed out to all disabled veterans a questionnaire offering counseling, vocational rehabilitation, job-finding assistance, and in addition we then set up a referral to the local veterans employment representatives stationed in the community at the State employment security job services' offices throughout the country, about 2,400 offices. We then set up a miniresume profile program as part of this for the unemployed veteran that would be prepared by the local veterans employment representative and sent to the National Alliance of Business, and through their metro offices around the country, they would distribute these miniresumes to their participating companies. As I understand, they had about 40,000 or 50,000 participating companies.

We completed this program and are reviewing the possibility of continuing it. Also, in cooperation with the Department of Labor and the State employment security agencies, the VA provides lists of service-disabled veterans to their disabled Vietnam-era veterans outreach program (DVOP) representatives. We developed a VA training program to train the DVOP representatives in reference to the benefits and the VA services that are available. An outreach effort is made by the DVOP representative in order to provide employment counseling and job placement services for the disabled veteran.

We have career development centers (CDC) located at our regional offices for special employment services to the disabled, the educationally disadvantaged, and those in need of vocational readjustment counseling. The CDC provides counseling and career planning, occupational information, marketing job skills, and job-finding assistance.

We have mail-outs of notices to all eligible applicants of the severely disabled veteran who may be entitled to special services such as the specially adapted "wheelchair" housing program for the severely disabled—paraplegics and amputees. We have mail-outs for therapeutic and rehabilitative devices that are sent to all disabled veterans who are in receipt of special monthly compensation or in receipt of aid and attendance.

We continue to send out notices for those who may be entitled to outpatient treatment for any medical condition if they have a 50 percent disability or greater, and we advise them of the medical care provided under the CHAPVA program for dependents and survivors of totally disabled veterans.

We have visual-impairment teams to provide services to blinded veterans in their home communities and assist in medical care, veteran benefit programs, devices to help overcome blindness, and referrals to blind rehabilitation centers and clinics.

We have the outreach rehabilitation technicians who are with 53 drug dependency satellite clinics. The ORT seeks out and offers these services to disabled veterans in the community who may be in need of this specialized treatment.

There is a continuing outreach effort to locate and recruit disabled veterans for job openings with our agency. The VA is a member of the

Work Group on Disabled Veterans of the Interagency Committee on Handicapped Employees. Contacts are made with national veterans organizations, State employment security agencies, Office of Personnel Management, and VA's own counseling and assistance staff, and through competitive civil service procedures and, by special authority, noncompetitive appointments are made under the VRA, veterans readjustment appointments, under the Vietnam Era Readjustment Assistance Act of 1974, and the civil service regulations of 315.604 concerning disabled veterans under vocational rehabilitation training with a Federal agency and appointment on completion of such a program.

Of course, the disabled veteran is labeled in any which way you want—I have heard this over and over again during the 2 days we have been here—the disabled veteran can be economically disadvantaged, he can be minority, he can be incarcerated—you name it. In addition to that, he has a disability.

Through our veterans' assistance discharge system, a complete packet of veterans benefit information is sent to the returning veteran. Included are applications and enrollment forms for vocational rehabilitation and training, certificates of eligibility for home loan guarantees, veterans group insurance, and the telephone number and address of the nearest VA office ready to assist him. A reminder letter is again sent out 6 months after his separation with the same information and again urging him to come in for services.

There have been special programs implemented by the Department of Medicine and Surgery concerning readjustment counseling for the Vietnam-era veteran. You may have heard of the vet reach program. There are about 86 storefront areas where they seek out those who have psychological stress disorders and may need special help. We have set up peer group visits to the disabled veteran and basically, of course, realizing that no matter what services you provide and rehabilitation and counseling and the medical care and all that, the end result is a job. If that disabled veteran is not placed in suitable employment where he can support himself and his family, then you fail. The Veterans Administration's primary objective is to help rehabilitate the disabled veteran so that he gets to that point. But the primary function for such employment services belongs to the Department of Labor and the State employment security agencies throughout the country. We have worked very closely with them in developing coordinated interagency programs to deliver the services to the disabled veterans.

I had some highlights of some special programs that we have been providing for the minority veteran, female veteran, incarcerated veteran, and I am just trying to get past it. Of course, I heard before about the American Indian, the Native American. We have special programs in reaching him and servicing him concerning his disability.

Overall, I have heard that drug- and alcohol-dependent veterans may not be disabled, and I think we in the VA feel that it is quite a severe disability and we, therefore, set up treatment programs in order to rehabilitate them to reach the point where they can be employable.

And, of course, the aged veteran is encountering many, many, many kinds of disabilities. We have outreach services to the senior citizens centers and nursing homes in order to provide whatever services we possibly can, and we are cooperating with HEW and their committee on aging to see what we can possibly do to help them in their rehabilitation.

Because of time, I will close by saying that I recognize that the disabled veteran falls into a little different kind of category when we talk about the handicapped individuals of the Nation. He has specific benefits provided for him because of his service, and what the VA is trying to do is to see to it that rehabilitation takes place, medically, physically, and vocationally, so he can take his place in society.

Thank you very much.

Chairman Flemming. Thank you very much.

[Applause.]

Chairman Flemming. Commissioner Horn.

Vice Chairman Horn. I would like to ask Mr. Frank and a number of you a series of questions.

Mr. Frank, has the Office for Civil Rights in the Department of Education examined the need for nationwide data with regard to the handicapped so that it can better measure whether progress is being made or isn't being made? And I am wondering, in your examination of the lack of data or the need for data, to what degree have you established relationships with the Bureau of the Census and, perhaps, sought to have reimbursable studies done by Census to help gather the data the Department of Education needs to function in this area?

Mr. Frank. In terms of actually gathering data, there has been a good deal of effort by OCR when it was part of the Department of Health, Education, and Welfare. I believe Ms. Galiber cited some figures on the representation of minority populations in the educable mentally retarded categories around the country in the school systems, and those figures come from a national survey which OCR completed fairly recently.

Vice Chairman Horn. Well, let's get that in the record at this point, if we might. I would like that survey placed into the record so we could analyze it.

Mr. Frank. Yes, sir. We will provide that.

**CHAIRMAN FLEMMING.** If you could provide it and at this point in the record we will refer to it.

[See Exhibit No. 15.]

**MR. FRANK.** On the Census question, I am afraid I don't know the answer. I will have to try to find out for the record, as well.

**VICE CHAIRMAN HORN.** Fine. If we could provide that in the record at this point, I would like to know what, if any, involvement has occurred between OCR under either HEW or, now, Education with the Bureau of Census in terms of trying to define the extent of various types of handicaps so they can better administer affirmative action education programs.

[See Exhibit No. 16.]

**VICE CHAIRMAN HORN.** Did you want to add something to that, Ms. Heumann?

**MS. HEUMANN.** He should answer the question about OCR. I can't answer that. But I would like to make a comment on the Bureau of the Census.

**VICE CHAIRMAN HORN.** Please do.

**MS. HEUMANN.** I think that it is interesting to point out—I have not been involved in the development of the census questions, but again we find ourselves in the situation where the census information is only going to be looking at persons 16 to 64, noninstitutionalized, and I think that is a critical problem. We are not going to have accurate information on the number of people below the age of 16. People in institutions again are being discarded, and the questions which are being asked, as was discussed yesterday, I think are inappropriate.

But I would also like to point out that the agency that I am working with is critically concerned about the methodology in which the census data is even being collected for disabled individuals. For example, if you look at 504, materials that are developed that are going to be utilized, dispersed through Federal monies, are supposed to reflect the fact that disabled individuals are part of the group. If you can recall any of the advertisements on TV giving information on the census, if any of you have seen interpreters and/or captioning on any of those advertisements, you are doing better on the east coast than on the west coast, because we haven't.

Additionally, the program that I work in, as I said, is run by disabled people. The Census Bureau came over to my agency and I was thrilled; they wanted to give us information. The literature doesn't reflect disability, doesn't mention disability, doesn't show disabled people, and when we even asked the gentleman to please show us copies of the questions that were going to deal with disability, he didn't even know what we were talking about. So the people who are actually getting involved in the distribution are ill-informed and the literature is, in my opinion, illegally drawn up.

**Vice Chairman Horn.** I would like you to please feel free to furnish for the record any specific suggestions you have as to the type of questions which should have been asked in this area, as well as the methodology. Now, as I understand it, we are talking about two possibilities here. One is the general long-form question which might be followedup on during a mini census in 1982. We also have the problem of a mid-decade census.

It seems to me we have an opportunity to try to get this area of concern in a proper framework by that time so that we overcome some of the methodological problems you are talking about.

**Ms. Heumann.** You might also want to look back historically on census collection, because until about 1930 there was extensive data collected on disability, and after 1930 things really fell apart.

**Vice Chairman Horn.** Ms. Galiber, I would like to just ask you briefly: What was the scope of the survey to which you referred? I wasn't quite clear on that.

**Ms. Galiber.** The survey was conducted in the District of Columbia. A random sample of over 700 people participated in the study.

And could I also mention, along with the findings of the Office of Civil Rights, that I would like to supply you with a paper from the Children's Defense Fund that speaks to the lack of enforcement on the part of the Bureau of Education for the Handicapped.

**Vice Chairman Horn.** Please do. We would be glad to have that at this point in the record.

**Chairman Flemming.** Without objection, that will be inserted at this point.

[The items referred to are: *A Survey on Identification of and Attitudes Toward Persons with Developmental Disabilities in the District of Columbia* , Information Center for Handicapped Individuals, Inc., Washington, D.C. 1976; and *Report by the Education Advocates Coalition on Federal Compliance Activities to Implement the Education for All Handicapped Children Act* (Pub. L. No. 94–142), April 16, 1980.]

**Vice Chairman Horn.** Now, one question on your survey: Did you find, when you analyzed the random sample of 700 from the District of Columbia, that there was any difference in attitude toward this handicapped minority from those who were in other minorities? I am thinking now of black, nonhandicapped,etc. Did you see any more, shall we say, "understanding, tolerance," whatever you want to call it, toward those problems? Because you mentioned that you were concerned about the attitude of those of low income and those of the aged.

**Ms. Galiber.** This is a majority black community, so the majority of respondents were black. Nevertheless, members of the white race did participate in the survey and we didn't notice that the attitudes of whites were different than blacks. Those of good financial means seemed to have a positive attitude toward the developmentally disabled and those that were poor had negative attitudes.

**Vice Chairman Horn.** Okay. So it is more of a socioeconomic class understanding.

**Ms. Galiber.** Right.

**Vice Chairman Horn.** Mr. Peltz, if I might ask you: You described in numbers the very extensive network of medical facilities, clinics, etc., which the Veterans Administration operates. To what degree does the VA know in its statistical gatherings from these facilities the extent of learning disabilities which exist among the veteran population of the United States? Do you collect data in that area?

**Mr. Peltz.** We have a program on the educationally disadvantaged. That would be those with less than a high school education.

**Vice Chairman Horn.** I am thinking of dyslexia, whether it is high school, college, nonhigh school, etc.

**Mr. Peltz.** I will be able to dig up some of the specific medical information. My expertise is more with the Department of Veterans Benefits than with our Department of Medicine and Surgery.

**Vice Chairman Horn.** All right. I would like the Staff Director to pursue this matter with the VA and put an exhibit in the record at this point as to two things: one, the degree to which the VA has a regular systematic procedure to examine in the veteran population learning disabilities, etc., as well as other types of handicaps we have described in this consultation; number two, what are the actual data, what do they reveal about the extent of these disabilities in the 30 million veterans. Here is a very large segment of the American society that has a specialized medical program directed to meet its needs. It seems to me this is an opportunity to find out in depth just what are those needs in that population.

[See Exhibit No. 17 for additional statements by Irving Peltz, including a Veterans Administration leaflet on veterans benefits.]

**Vice Chairman Horn.** Now, what I want to get into next here, something we haven't really pursued in these hearings, but the VA is in a unique position to do this, is the relationship between the extensive educational benefits of the VA and the employment opportunities in which the VA also helps, and what do we know about the effect, if any, of handicaps on the educational population of getting them into the educational system sponsored by the VA, at least through benefits, and then what does the VA know about moving them through that educational system into the jobs, what type of jobs, etc.

I don't expect you to answer that today. I merely want this in the record. I want the Staff Director to follow up with the VA Administrator and put that into the record.

CHAIRMAN FLEMMING. Without objection, that will be inserted at this point.

VICE CHAIRMAN HORN. My last question to the VA is this: When an honorably discharged veteran becomes subject through the commission of a crime to the Federal, State, or local prison systems in the United States, are VA services still available to those veterans while they are in custody?

MR. PELTZ. Yes, they are.

VICE CHAIRMAN HORN. They are. Do we know——

MR. PELTZ. We have a special program for incarcerated veterans.

VICE CHAIRMAN HORN. Okay. Well, I want to pursue that program. To what extent do we——

CHAIRMAN FLEMMING. I might interrupt. As I understand, you have that special program contained in your outline.

MR. PELTZ. Yes.

CHAIRMAN FLEMMING. You skipped over that at my request, but it is in the outline which will be in the record.

[See Exhibit No. 17.]

MS. GALIBER. Mr. Chairman, could I mention that there is an Incarcerated Veterans Association, and I would think there should be some contact with that group.

VICE CHAIRMAN HORN. Sure. What I want to know, though, from the VA is the extent to which they can furnish for the record the degree to which the vocational rehabilitation programs which you operate are cooperating with Federal, State, and local prison systems and jails—half the people are in jails in this country, not State prisons or Federal prisons—and the degree to which we are linking up an analysis of the disabilities those incarcerated veterans have—and now I am thinking of learning disabilities, as well as physical handicaps, etc.—in trying to pinpoint and target services from the VA to help them while they are in that incarceration situation. Or, if they aren't able to help them, to what degree has the VA considered the funding of specialized programs for incarcerated veterans through either the Federal, State, or local prison and jail systems.

Put that in the record, please.

CHAIRMAN FLEMMING. Again, we will request that information through the Staff Director and the appropriate contact at the Veterans Administration.

[See Exhibit No. 17.]

**Chairman Flemming.** Commissioner Saltzman?

**Commissioner Saltzman.** Can any of you help me with information as to the pending legislation before Congress on institutionalized persons? You, Ms. Heumann, mentioned that there are 40,000 warehoused people. Was that a correct figure?

**Ms. Heumann.** I said it was costing $40,000 a year to warehouse a person in California.

**Commissioner Saltzman.** Oh, $40,000 a year?

**Ms. Heumann.** Right. The figure is much higher than 40,000.

**Commissioner Saltzman.** There are many more than 40,000.

**Ms. Heumann.** Yes.

**Commissioner Saltzman.** Okay. Are you aware of that?

**Ms. Heumann.** Are you talking about—I am not sure—the legislation which is supposed to be going to Justice which is going to deal with allowing the Justice Department to go directly into State institutions through litigation? Is that what you are talking about?

**Commissioner Saltzman.** Yes, that is one aspect.

**Chairman Flemming.** S.10.

**Commissioner Saltzman.** S.10.

**Ms. Heumann.** S.10, right.

**Commissioner Saltzman.** Does that have any impingement on the concerns of the disabled community?

**Ms. Heumann.** Positively. We think that it is good that the Justice Department is going to be able to go directly into the institutions to begin litigation to make sure that the institutions are providing appropriate services and depopulating, as we think they should be. And I can't give you more information on the status.

Do you know the status of the bill, Yetta?

**Ms. Galiber.** No.

**Chairman Flemming.** Yes. They just had a filibuster on the conference report of the Senate which was broken into the Senate and taken action on the conference report. I don't know the end.

**Commissioner Saltzman.** Is the disabled community supporting that particular bill in any organized fashion?

**Ms. Heumann.** I know that the DD community has been very actively involved in supporting it and other organizations like myself have been supporting it.

**Commissioner Saltzman.** Mr. Chairman, I don't recall. Did we comment?

**Chairman Flemming.** Yes, we did.

**Commissioner Saltzman.** We did.

**Chairman Flemming.** We supported it, suggested amendments, and it is now in its final stages.

**Commissioner Saltzman.** Thank you.

**Chairman Flemming.** Commissioner-Designate Berry?

**Commissioner-Designate Berry.** Yes. I have four very quick questions, I hope. Ms. Heumann, I read your paper very carefully, although I did not hear all of your testimony. I found it a rather spirited defense of the rights of the disabled.

I wonder whether we will be in a position on the issue of education, focusing on that particular, of having more and more people complain that instead of the denial of opportunities, there is reverse discrimination in favor of the handicapped.

Under 94–142, in many of the States that I have visited, people have complained that with the tight budgets for education they are putting resources into programs for the handicapped, taking resources away from other children, and that the Federal Government is only providing 12 percent of the excess cost for educating handicapped children, so that we might be seeing in fairly short order some reverse discrimination suits. Do you have any comment on that?

**Ms. Heumann.** We don't have a lot of time, so I think that parents of disabled and nondisabled children in this country have to start demanding what is an appropriate education for all children, and I think that disabled children in this country certainly have been faced with reverse discrimination, if that is the term we want to use, for years and years in not receiving appropriate services.

What I sincerely hope does not happen is a fight between parents of nondisabled kids and parents of disabled kids, because what's needed is a unification of fighting for appropriate educational services for *all* kids.

**Commissioner-Designate Berry.** Mr. Peltz, I found your testimony to be in stark contrast with that of the representative of the Disabled American Veterans who was here yesterday. You seem to believe that there were a wide variety of programs that were meeting these needs.

I would like to know in particular just what is the correlation between preparing veterans for jobs, which you said was the VA's responsibility, getting them ready for Labor programs to take over, and veterans successfully getting jobs. Do you have any numbers on that? If you don't have them now, if you could provide them later.

**Mr. Peltz.** I first would like to say something. I spent 21 years as an antagonist of the Federal Government and particularly the VA and Department of Labor. I was with the Disabled American Veterans and I was their national service director. I would expect the representative of the DAV not to have too good things to say. You need antagonists. You need those who will hit the bureaucrat sitting on his butt and saying, "Hey, let's get him to do something." You need that.

But let's not—sometimes you go overboard. I would say, and what I tried to get across here, is what the Federal Government, through the VA's veterans benefits program, is trying to do.

It is quite evident on employment that as an agency we can only go so far relative to employment programs. The primary responsibility for employment programs and services in the Federal agencies is with the Department of Labor and the 50 State employment security agencies around this country, and each one in each State is controlled by the Governor and they set up their own rules.

**COMMISSIONER-DESIGNATE BERRY.** Mr. Peltz, I understand that. I was simply asking——

**MR. PELTZ.** So trying to——

**COMMISSIONER-DESIGNATE BERRY.** —you whether there was any correlation between the sucess of the VA programs—and I am not asking you to answer that now, but if someone could determine that—and the job success rate of the people who are in the program.

**MR. PELTZ.** I covered it very lightly in the fact that what we try to do is coordinate what we are doing with the Department of Labor and their offices around the country—there are 2,400 State employment security job service offices—and with their local veterans employment reps and with their disabled Vietnam-era veterans outreach representatives.

As far as we go is to train their people in veterans benefits so that we can get our services in——

**COMMISSIONER-DESIGNATE BERRY.** I understand.

**MR. PELTZ.** —as a total service.

**COMMISSIONER-DESIGNATE BERRY.** Thank you, Mr. Peltz.

And, finally, Ms. Galiber, it is my impression, based on your testimony, that blacks and Hispanics and other minorities may not be well represented in advocacy groups or social service decisionmaking positions having to do with the disabled. Is that correct or incorrect?

**MS. GALIBER.** You are absolutely right.

**COMMISSIONER-DESIGNATE BERRY.** Is there some reason for that?

**MS. GALIBER.** Yes. I think there are many reasons, but let me suggest that handicapped persons attempting to access the service delivery systems that are astute enough to know how to go about it are themselves bombarding the social service system. So it is very difficult to get those persons responsible for the delivery of services to take the time to do the outreach that is necessary to those ethnic groups that are not aware of their rights. That is the problem.

**COMMISSIONER-DESIGNATE BERRY.** Thank you.

**CHAIRMAN FLEMMING.** Commissioner-Designate Ruckelshaus?

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** I just have a couple of short questions.

Ms. Heumann, I just need some background in P.L. 94–142. Are there any statistics available on the number of youngsters who are now being served by this program as opposed to the total number eligible?

MS. HEUMANN. I don't have them in my head, but they can be gotten from the Bureau of Education for the Handicapped.

COMMISSIONER-DESIGNATE RUCKELSHAUS. What is the language of that law? Does it require providing transportation?

MS. HEUMANN. It requires that all children of school age are to receive the free appropriate public school education and are to receive those services which are necessary to enable them to receive such education. So, for those children who would need transportation to get to and from school, yes, in fact, it would require that it be provided.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Are you aware of any identifiable groups of disabled youngsters who are not able to take advantage of this program because of certain limitations?

MS. HEUMANN. My statement very briefly highlights that. Ms. Galiber's request, I believe, to have the Children's Defense Fund report submitted on record I think would also be appropriate. It lists quite substantially, not nationally, but with surveys that have been conducted in a number of States, the number of children out of school and the number of children receiving inappropriate services.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Good. I think that would be a good thing to put in the record, Mr. Chairman.

CHAIRMAN FLEMMING. Without objection, that will be done.

COMMISSIONER-DESIGNATE RUCKELSHAUS. I would also like to know, what is the wording in the law on public transportation accessibility?

MS. HEUMANN. There is a big controversy going on right now about that. Currently, the 504 regulations for transportation require that as new equipment is purchased, that that equipment has to be accessible. I believe Dennis Cannon is going to be speaking later on and he will get much more extensively into transportation.

Right now there is an amendment that is being considered on the House side which, instead of requiring that local transit systems become accessible and integrated so that disabled people can use regular systems—the amendment will allow for something called local options; in other words, would allow for each individual community to decide whether or not it wanted to have accessible transportation and to allow for something called paratransit.

I think it is fair to say that the disabled organizations across the United States are currently mobilizing against the Cleveland amendment, since we want to see an integrated transportation system and paratransit for those people who cannot utilize integrated public transportation, but that we feel that paratransit is very, very expensive and very, very ineffective.

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** Thank you. One last question. I was interested on pages 6 and 7 of your paper—the terrible sort of whipping around that the disabled person who attempts to go to work gets when they find that they have lost the support of SSI. Where does that figure of $200 come from? You said if you are making $200 a month——

**MS. HEUMANN.** I believe it is within the regulations.

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** Now, is that adjusted in some way for inflation, as an automatic adjustment?

**MS. HEUMANN.** It is a national figure?

**CHAIRMAN FLEMMING.** We could insert in the record at this point the appropriate regulation, and there is provision for adjustment on the cost of living.

**MS. HEUMANN.** There is a new bill, which is currently out of committee and the number of the bill is H.R. 3236, which would begin to deal with some of the work disincentive problems. The basic problem with the bill,, however, is that it is a 3-year study bill and I am really glad you brought this problem up, because work disincentives for disabled individuals is one of the most critical problems facing disabled people to fall back on, is not going to allow disabled people to go to work, and that problem has to be very extensively looked at and recognized that, unless the problem is remedied, disabled people who are severely disabled are not going to be able to go out and work.

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** And one last thing. You use the word "antiquated" when you talk about the methods that medicaid and medicare use to determine cost of durable equipment. That seems to be another very crucial disincentive. What is the antiquation that you are referring to and is the 80 percent cost a result of that or is that built in in the language?

**MS. HEUMANN.** It is really extensive. Basically, what goes on is that the people who are involved in developing the formula—the example that I used in my paper was a person who needed a new cushion and it was decided by a group of people that cushions only needed to be purchased every 3 years. Well, a lot of that information is based on a medical view of a disabled person as opposed to a disabled person being viewed as a person. And, in fact, if you are going to be getting around in the community very actively, you need to be looked at from that perspective. So, failure to recognize the changes in disabled people in the community and the upward mobility that we are attempting to achieve results in problems like this.

Now, the 80 percent figure on medicare is a federally mandated limit. Also, if you are a medicare-medicaid crossover, the figure, the 80 percent figure, is derived by various people. Now, that figure, by the time it comes out, can frequently be outdated, so that, in fact, what medicare would be paying for would actually not be 80 percent of the real cost. Then medicaid would put on—it can only put on an additional 20 percent. So let's say you are now only coming up to only 90 percent of the actual cost of the equipment. By law, neither the disabled individual nor anybody else is allowed to put in the additional 10 percent; therefore, you are unable to get the equipment.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you very much.

CHAIRMAN FLEMMING. Commissioner-Designate Ramirez?

COMMISSIONER-DESIGNATE RAMIREZ. Yes. I would like to go through a few questions very quickly.

First of all, Ms. Galiber, how are you defining "developmentally disabled" in your paper?

MS. GALIBER. We were defining it initially in the study under the Public Law 94-103 that identifies categories of disabilities, such as mental retardation, cerebral palsy, and so forth. At this particular time, however, I think we are all using the functional definition, but during that study those different disabilities were identified.

COMMISSIONER-DESIGNATE RAMIREZ. And, secondly, could you provide for the record the reference again to the study on minorities and social services that you cite was the California study?

MS. GALIBER. Oh, yes. That study is available.

CHAIRMAN FLEMMING. I think you have a citation for the study in your statement.

MS. GALIBER. Yes.

COMMISSIONER-DESIGNATE RAMIREZ. I have a question for Ms. Heumann. As I understand it, there is the vocational rehabilitation social service system and then there is the other social service system of operating in communities. Do disabled people have access to the nondisabled-focused social service system and, more importantly, do disabled people going into the Title XX system, if we can call it that—are they likely to see the particular services that they might need by virtue of their disability by going into that system?

MS. HEUMANN. Okay. First of all, the rehabilitation system needs to be understood. It is relatively narrow in focus. It is only—its primary purpose right now is to deal with assisting disabled individuals in securing employment. There have been amendments that were passed about a year and a half ago which would allow the State agencies to begin to provide services to people who are labeled as most severely disabled who do not have an employment objective. However, there has been relatively little money put into that program, so people who are labeled as severely disabled and theoretically unemployable—and I have to underline "theoretically" unemployable—are not receiving any services or, in many cases, inferior services.

When you look at the social service system as a whole, I think it is very fair to say that disabled individuals have a great deal of difficulty obtaining access to regular services in the community. This is for a number of reasons: failure to hire disabled individuals, basic accessibility problems, failure to have interpreters for deaf individuals, steps, bathroom facilities, etc., etc., and, obviously, also, the issue of attitudinal barriers where nondisabled people are just afraid to serve disabled people.

We found in our community that the development of an independent living program has done a number of things. One, it has provided a full range of services. We provide 20 to 25 different kinds of services for people. Additionally, what we are attempting to do is to work with existing community organizations.

Specifically, I would just like to highlight a problem. In California, there was a 504 complaint filed by a disabled person against the drug and alcohol programs. It was found there was not a single drug and alcohol program in the State of California that was providing appropriate services to people who could be defined as multiply disabled, since a person who was a substance abuser would be covered under 504. However, if you were a drug abuser or an alcoholic and also a blind or deaf or physically disabled or mentally retarded, or whatever other label you want to be given, it is not possible to receive appropriate services.

So one program that we are running at our center is to provide services to people who are substance abusers and have, you know, two disabilities. Additionally, we are trying to work with the medical profession, because we are finding that one of the big problems with substance abuse for persons who are disabled is that the medical profession is overmedicating based on lack of information about disability or inability to cure people.

We are also trying to work with the drug and alcohol programs in the communities to make them aware of the needs of people who have other disabilities, to begin to get them to start providing services.

The question is mammoth and what really needs to be dealt with—and California is beginning to look into this—and that is to do with much closer interagency coordination so that the agencies (at the Federal level, the State level, the city and county level) begin to coordinate more effectively and to begin to monitor more effectively 504 implementation. Section 504 requires that recipients of Federal financial assistance not discriminate against disabled individuals.

So in the case of the drug and alcohol programs in the State of California, the State was found to be totally out of compliance by the Office of Civil Rights.

Title XX is a very, very big question and there isn't one answer. Title XX is administered differently within each State. Each State applies for monies based on various formulas, so the services that are provided through Title XX from State to State differ.

California uses a substantial amount of its Title XX monies for something called inhome support of services, which is the way California provides attendant care monies to disabled individuals. Most States in this *country do not* provide cash grants to disabled individuals to pay for attendant care services, and that is a major problem.

**COMMISSIONER-DESIGNATE RAMIREZ.** Thank you very much.

Just one more quick question for Mr. Peltz. Does the VA have a civil rights division?

**MR. PELTZ.** We have the Office of Human Goals with an assistant administrator who specifically handles all outreach activities in reference to civil rights.

**COMMISSIONER-DESIGNATE RAMIREZ.** What I am interested in understanding is whether you have a way of either gaining information, gathering data, or in some other way monitoring whether VA as an agency is attending to issues related to civil rights, both in terms of minorities, women, and disabled persons. If you don't have the answer, and if there is an answer——

**MR. PELTZ.** The Administrator specifically set up this office for that purpose and appointed an assistant administrator with the particular duties and responsibilities relating to what you say. So we do have it.

**CHAIRMAN FLEMMING.** In order to enlarge upon your response to that question, we will request a job description for that particular office and insert that in the record at this particular point.

[See Exhibit No. 18.]

**CHAIRMAN FLEMMING.** May I express to all the members of the panel our very deep appreciation for coming here and presenting to us your views and your convictions on a very, very important aspect of this total problem. I appreciate the fact that we tried to get a lot of material into a comparatively small span of time. You have cooperated and we appreciate it very, very much.

Thank you all very much.

[Applause.]

## Physical Facilities and the Handicapped

CHAIRMAN FLEMMING. I will ask the members of the next panel to take their places very quickly. This will deal with Physical Facilities and the Handicapped.

The first member of the panel is Mr. Ronald L. Mace, president of Barrier Free Environment, Incorporated, Raleigh, North Carolina.

Mr. Mace is a registered architect with the State of North Carolina and has been in private practice for the last 5 years. He has also taught architectural technology at Fayetteville Technical Institute in Fayetteville, North Carolina. Five years ago he founded Barrier Free Environment, Incorporated, a design and consulting firm specializing in the environmental needs of people with disabilities.

Mr. Mace has served on national advisory committees and task forces and has been an organizer, speaker, and panelist at conferences, workshops, and seminars across the country.

Mr. Mace will summarize his paper on architectural barriers and employment opportunities for the handicapped.

We are very happy to have you with us, Mr. Mace.

# PHYSICAL FACILITIES AND THE HANDICAPPED

By Ronald Mace[*]

The term architectural barriers refers to a broad range of features found in the environment that prohibit people with disabilities from independent use of buildings or other types of facilities. These barriers are inadvertently created by designers, builders, and manufacturers who do not know how to create an environment that can be used equally by all people. They exist in our parks, streets, building sites, in manufactured products, equipment, appliances, and furnishings, as well as in our buildings. Some are obvious tangible and measurable elements such as stairs and curbs. Others are less visible but equally prohibitive such as the pressure of a door or the glare from a poorly placed window. The problem of barriers is much broader and involves more than just architecture and architectural solutions. In fact, barriers are so widespread it is perhaps best to refer to them as environmental rather than architectural barriers.

Environmental barriers vary depending on one's disability. That which is an insurmountable barrier to one person may be a minor inconvenience or no trouble at all to another. The nature of barriers and their effect on the individual can vary widely. The following two examples might help to illustrate.

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[*] Ronald Mace is president of Barrier Free Environments, Inc., Raleigh, N.C.

*Example Number 1*

You are a person with a severe mobility impairment and you use a wheelchair at all times. You are looking for a job and have a midmorning interview at a nearby high rise office building. You drive to the building arriving 20 minutes early to allow yourself time to park and find the correct office. You drive through the parking lot but cannot find a space wide enough to allow you to get your wheelchair out of the car. After making several trips around the lot and losing precious minutes of your time, you park illegally on the street and get out of your car. Next you are confronted by a 6- or 8-inch curb. You wait a few minutes because you see some people coming down the street. They almost get to you when they turn and cross the street. You wait again and a passerby finally stops and helps you up the curb and then goes on his way.

Continuing on toward your appointment, you find the going easy on a wide, smooth concrete walk with only a gentle slope. Rounding a bend in the walk the next obstacle appears. This time it's four steps up to a terrace level leading to the building entrance. No one in sight this time so you go back down the same walk to the street and around the side of the building to see if there is another entrance which is accessible. No luck, so you go back to the terrace steps and wait, hoping help will come along.

The first person to appear is an elderly woman, willing, but certainly unable to assist you up the steps. You then see a possible pathway around the steps. If you cut across the lawn and go up a grassy embankment, you might switch back across more lawn and arrive at the terrace level. With assistance from the woman you set out on the climb. It rained the night before and the ground is soft and the grass a bit slippery, but with your assistant perhaps you can still make it. Fifty feet out into the grass you find your front wheels are up to the handrims in the mud. Having no choice, you push on and in another 15 minutes you arrive at the terrace level, your chair looking like a used bulldozer and mud on your suit and hands. You thank the woman for her assistance and push on toward your destination.

Next, beyond all belief, you find the main entrance to the building is a revolving door and you know your chair cannot fit through it. There is a swinging door beside it, but it has no handle on the outside to pull it open. Since it's meant to be used as an exit in case of fire, it only opens from inside and when it is opened, it triggers the fire alarm. Again, you wait for help. The first two people coming out don't know what to do and have no time to find out.

Having been through this before you know that revolving doors fold so furniture can be brought in, but you also know it takes a maintenance man to do it. You ask the next person along to go in and find someone in charge. A few more minutes go by and a secretary comes out to see what the problem is and presently agrees to call for the maintenance man. Ten more minutes and he arrives to help but must go back to his shop for the proper tools. Ten more minutes and you're inside the lobby. It's now 45 minutes since you left your car only 100 feet outside the building.

Then, as if to add insult to injury, the maintenance man tells you that there is an accessible entrance elsewhere and insists that when you are ready to leave you should call him, and he will let you out that way. After a few more minutes of conversation, you learn that the "accessible" entrance is a wood plank ramp built up to a loading dock in back of the building in the service delivery yard beside the Dempster Dumpsters. To go out that way you must be escorted via a locked freight elevator and go through the cafeteria can wash to the loading dock, which is a city block from the nearest parking space. You thank the maintenance man for his "assistance," ask for the men's room where you would like to wash off some of the mud, and prepare yourself for the possibility that you might still have a job interview (although you are now 30 minutes late).

You push open the men's room door and enter, scraping the jamb with your chair because the door is slightly too narrow. Ahead of you is a second door forming a vestibule for privacy. The first door closes behind you. You find that the next door pulls toward you. Because of the closed door behind, you are unable to back up to pull the one in front of you. You are trapped. Minutes, seemingly hours, go by before someone enters the men's room. With several maneuvers and someone to hold the door, you enter the toilet room. Here you find you cannot enter a toilet stall because the door is too narrow and, due to tight space, you cannot turn around in the room. You will have to back out through that vestibule. You do get to a lavatory and, miracle of miracles, you can reach the paper towel dispenser. You shake the water from your hands as best you can and begin backing out. A short wait for the next assistant to hold the doors and you're out in the hall ready for your job interview. You stop for a sip of water to regain your composure. The water fountain is high; you stretch to reach the spout and turn on the water; it runs down your chin and neck wetting your shirt, collar and tie. You curse and set off for your interview.

You arrive at and enter a waiting elevator; there is no one else in it. The control panel is tall and very high. Your floor is "17" and you can reach only as high as button "14." Suddenly, the doors close and the elevator begins its ascent right past your floor. It stops on "18" to pick up the caller. The new passenger enters, presses "lobby" and the doors close. You ask him to press "17" for you. He hesitates, wondering why you ask, then presses it. . .too late. You're on your way to the lobby.

When you finally reach your job interview, having received help from eight people, you're over an hour late. In addition to the normal anxiety anyone feels on a first job interview, you have mud all over your clothing and chair, your hands and shirt are still wet, you need to use a bathroom, and you know when you're ready to leave you must call and be escorted out with the garbage cans.

*Example 2*

You are a blind person. You have been trained to get around independently by using a long cane. You too are off on a job interview. You arrive at the same building by taxi. You leave the cab at the street and make your way along the walk toward the building using your cane and the edge of the walk as a guide. You come to the steps up to the terrace entrance level and you detect them with your cane. You continue up the stairs and note that there is no handrail available. You proceed with caution. At the top of the stairs you find yourself on an open terrace or plaza. The surface is concrete or brick, and there is no distinguishing texture or edge to guide you to the door. Again, you proceed with caution. You hear people entering the building and the familiar sound of a revolving door, and you move toward the sound. You find the door with your cane, wait for a second, and when you feel it move you step in through the opening using the door itself as a guide.

Once in the lobby you find yourself on a hard surface with no guiding edge or texture. You wait for some cue as to the presence of a receptionist to ask for directions or assistance. Some children run by and out the door; no one else is in the lobby. You hear the elevators opening and closing, and you move toward them expecting to encounter people to help. At the elevators there still are no people. A car arrives, a bell rings once. You do not know what the bell means and the car is standing there with its doors open. You enter cautiously and find the control panel beside the door. All the buttons are smooth and feel the same, (there are no raised numerals or symbols beside the buttons) and you inadvertently press several while attempting to find raised numerals or symbols on or next to them. The elevator makes three stops according to the buttons you pressed and still no one has boarded with you. At each floor a bell rings once as it did in the lobby, but you are unable to tell which floor you are on. You want floor number "17" but have no way to tell when you reach it. Unless people get on with you soon, you realize you might ride all day. You are on floor number "24" before someone enters and presses "17" for you.

Once on floor "17" you check the wall beside elevators for signs with tactile directions, but there are none. Again you are dependent on someone to direct you to room 1721. You decide to enter the first office you come to and ask for assistance. You move off down the hall with your cane sweeping along ahead of you. Suddenly, you bump into an object with your hip and abdomen. It hurts and startles you. You check it out and learn it's a wall-hung water fountain protruding into the hallway and too high for your cane to detect. You find a door, check for a raised lettering sign—none there. You grasp the handle making sure that there is no texture to designate a hazardous area. You open the door, step inside and, as the door closes and locks behind you, realize you are in a stair tower. Voices lead you down two flights where some workmen take you back to the elevators and accompany you to 1721.

The barriers illustrated in these examples are but a few of the many types encountered in the everyday lives of disabled people. There are similar examples for people with other disabilities. The details might vary; the effect would be the same: isolation, dependency, and inequality.

Such barriers are found in virtually every type of facility and this affects the participation of disabled people in every type of human activity, including education, employment, housing, recreation, health care, government service, commerce, and travel.

### *Why Do Barriers Exist?*

As manmade elements, barriers are planned and constructed by the designers, architects, engineers, and administrative officials who shape our environment. The training of these professionals does not prepare them to design for the widely varying abilities of the people who will use their facilities. No school of architecture, design, or engineering incorporates the performance characteristics of children, the elderly, or disabled people in their design curricula, so most are designing for a theoretical, able-bodied adult population.

Another reason for the existence of environmental barriers is the negative attitudes and lack of awareness of professionals about disabled people. Most designers, unless they happen to have had personal experience with disability, are totally unaware of the functional abilities and requirements of disabled people. They, as well as others, do not understand the potential for people with disabilities to live active and independent lives. Many, even after being informed of design requirements for the disabled, believe that they need only consider disabilities when designing medical facilities, doctors' offices, and similar places of care. They have difficulty believing that disabled people hold jobs and therefore need access to business, or that they can participate in sports and therefore need access to sports facilities.

One example of this limited understanding surfaced recently when an architectural firm refused to make a fire station accessible because they insisted that no disabled person could become a fireman. They had not considered the clerical and support positions, such as dispatcher, which many disabled people could qualify for.

Another deterrent to acceptance of accessible design is the common misconception that it costs more to make facilities accessible. This myth has been explored by numerous studies of costs for making new facilities accessible. These studies have shown that careful planning and design by knowledgeable people can produce buildings and facilities which are fully usable by all people without any significant increase in cost or any loss of function.

In some instances accessible design can be less costly. For example, placing the floor level of a building close to ground level to provide an accessible and level entrance can eliminate the need for expensive stair construction. Often designers who complain of high cost are those who approach accessible design as an add-on or afterthought, designing their buildings without any consideration for accessibility and then adding expensive ramps or lifts or other features that might have been eliminated by careful early planning. Accurate and timely technical information, awareness, and understanding of disabled people are the ingredients that go into creating positive attitudes. Without them little is accomplished.

## What Has Been Done?

Faced with the limited knowledge and understanding of design professionals and program administrators, disabled people years ago began appealing to their State legislators for relief. The result over the past 20 years has been the development of State and model building codes or regulations requiring accessibility in public and/or private facilities. Today there are mandatory accessibility requirements of some type in every State.

In 1968 the Federal Government became involved in this new civil rights movement by enacting Public Law 90–480, the Architectural Barriers Act, and again in 1973 with enactment of the Rehabilitation Act. The Architectural Barriers Act was intended to ensure that certain federally funded buildings were designed and constructed to be accessible to the physically handicapped. It directed the Administrator of the General Services Administration (GSA) and the Secretaries of Housing and Urban Development (HUD) and Defense (DOD) to consult with the Secretary of Health, Education, and Welfare (HEW) and to prescribe standards for access to buildings under their agency jurisdictions. The content and application of those standards was left to the discretion of the agency administrators.

Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (A&TBCB) and gave it the responsibility for ensuring compliance with the standards prescribed by GSA, HEW, DOD, HUD, and other agencies. Subsequent amendments in 1974 modified the Board's makeup and responsibility under the law but left the major purpose intact.

Section 504 of the Rehabilitation Act of 1973 requires that any program in whole or in part funded by the Federal Government must be made accessible to all otherwise qualified disabled people. Section 504 does not specifically require physical or building accessibility, but physical accessibility is often the best method of achieving program access.

## Standards Adopted and Their Effectiveness

In 1961 the American National Standards Institute (ANSI), an organization established to coordinate the development of voluntary national standards, issued ANSI standard number A117.1 titled, *The American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped.* This standard was developed by the President's Committee on Employment of the Handicapped (PCEH) and the National Easter Seal Society (NESS). The work was performed at the University of Illinois.

This standard was the first to set down specifications for design for disabled people and, being the only model available, it was adopted or referenced in every State access code or law during the formative years of accessibility requirements. It was also adopted or referenced by several of the Federal agencies during the early sixties. After enactment of the Architectural Barriers Act in 1968, the Administrator of GSA and the Secretaries of HUD, DOD, and HEW each seized upon it as the standard for regulations within their agencies.

The 1961 ANSI standard is a voluntary national standard. It gives specifications for making elements of the environment accessible, such as toilet stalls, parking spaces, water fountains, etc. Because it is intended for widespread adoption under a wide variety of jurisdictions and for thousands of types and sizes of buildings, it does not specify how many of each accessible element to install, nor does it state where to put them. The few times it mentions numbers of accessible features, it calls for an "appropriate" number. The determination of appropriate numbers is left up to the adopting authority.

In many cases the adopting authorities, including Federal agencies, did not realize this or simply did not care and adopted it totally by reference without specifying applications criteria. Architects and engineers working with these mandatory regulations found that they had no guidance as to how many of each feature to install or where to put them. The administrators didn't know, the disabled community didn't know, and, since there were no answers nor any enforcement activities, many practitioners did nothing. Those who tried to work with the standard soon learned that, in addition to lack of specificity, the standard did not cover housing, its language was vague, and it left out provisions for some disability types. It soon became commonly recognized that the 1961 standard was inadequate for its intended purpose.

## *The Standards Explosion*

With good intentions and under scrutiny by newly emerging disabled advocacy groups, State code authorities and Federal agencies with standard-setting power modified and added to the technical specifications of the 1961 ANSI standard and established applications criteria. The result was the promulgation of 75 to 100 differing design standards for accessibility in the United States. This proliferation has caused chaos and confusion in the construction and regulatory fields and has resulted in a situation where several standards might be applicable to a single construction project even though they all disagree with each other on any given design feature. What does an architect do when required to install three different sizes of toilet stalls in the same location? He might attempt to find out which one is failing in that he may try to find out which agency is most likely to enforce their standard and go with that one. If he thinks no one will notice, he will probably do nothing. Too often, the latter is the course taken.

## *The Effectiveness of the Architectural Barriers Act and Section 504 of the Rehabilitation Act*

The Architectural Barriers Act has not been effective in removing barriers to disabled people because of::

1. the inadequacies of the 1961 standard upon which the agency standards were based,
2. inappropriate procedures for adopting and applying the ANSI standard,
3. vague language of the act itself,
4. the proliferation of conflicting standards,
5. nonexistent or inadequate review and enforcement.

Many of the problems and deficiencies of the act and the 1961 ANSI standard were noted in the 1976 publication *The Effectiveness of the Architectural Barriers Act of 1968,* hearings before the Subcommittee on Investigations, and review of the Committee on Public Works and Transportation, House of Representatives.

Although section 504 of the Rehabilitation Act of 1973 has already had a major effect on access to federally funded programs across the country, its impact on physical accessibility remains to be seen. Like the Architectural Barriers Act the Rehabilitation Act's effectiveness in this area has been limited by the inadequacy of the standards.

In May 1978, HEW published regulations for implementing section 504. These regulations require program accessibility and do not specifically require building accessibility. Therefore, not *all* buildings housing HEW-funded programs can be expected to be made accessible, but only those where building changes are made as a means of providing program access. The HEW regulations specify the use of ANSI A117.1 (1961) or other comparable standard where modifications are to be undertaken as a means of achieving program access. Thus, once more we have a set of regulations where the 1961 ANSI standard has been referenced without adding the appropriate applications criteria. The inadequacy of the HEW 504 regulations in the area of physical accessibility has added to the confusion in the field. Other agencies' 504 regulations are coming out and include in some instances whole new standards for making facilities accessible. They can only be expected to add an additional layer of confusion.

## The Single Standard

Design practitioners, manufacturers, regulatory agencies, and disabled people and their organizations have long seen the advantage of a uniform standard. The cost of indecisiveness, disagreement, contradictory requirements, and their inherent confusion and delay are high. They are high in dollars and high in frustration and ill will. The costs for accessibility are not high.

A single comprehensive standard for accessibility is needed, one which would contain the definitive technical specifications that everyone could apply to their programs with reasonable certainty that disabled people would be accommodated and which would result in the same accessible feature regardless of where it is located. After all, why should an accessible toilet stall in a GSA building be different from one in a HUD building? HUD may wish to put one such stall in its buildings and GSA may decide to make all its stalls accessible, and we may never agree as to what the right number is, but surely we can agree on the right size to make the accessible stall. This desirable level of uniformity can be accomplished through adoption of a single design standard for accessibility.

## The 1980 ANSI Standard

In 1974 the Department of Health, Education, and Welfare, the President's Committee on Employment of the Handicapped, and the National Easter Seal Society began a project to update the ANSI A117.1 standard for accessibility. A contract was awarded to Syracuse University School of Architecture to conduct research and otherwise investigate the state of the art of accessibility and to revise the ANSI standard. This proved to be an enormously difficult and controversial task, which required the approval and agreement of all organizations and individuals representing affected interest groups. The project was intended to take 2 years, and it raged on for almost 6. Despite frustrations and impatience, all involved felt certain that at last we were on the way toward the comprehensive uniform standard so badly needed. Finally, in early 1980, the revised ANSI A117.1 standard was adopted by the American National Standards Institute and copies are scheduled to come out on May 15 of this year.

The new ANSI standard is broader and more comprehensive than the previous version. It includes technical specifications for accessible elements and spaces within buildings and facilities, and it now includes a section on accessible housing requirements. Again, as any standard intended for universal adoption must, the new ANSI standard leaves the application of the specifications up to the agency or entity adopting it. That is, it does not specify how many to install or where to put the accessible features that are included in its specifications. It does, however, include instructions to the adopting authority that list decisions about its application they should make when it is adopted. If followed, those instructions will help develop appropriate application criteria and avoid the mistakes so often made in adopting the 1961 version.

## What Next?

The new ANSI standard is a private, voluntary, industry-developed standard, which is available to anyone for adoption. Since government agencies as well as private enterprise were involved in its development, and all involved were aware of the intent to finalize and agree upon a single standard, it was hoped that it would receive unanimous support and that there would be a concerted effort to see it adopted into regulations: That hope has been dashed by events of the last few months.

Because it took so long to reach final agreement on the new ANSI standard, many of the reviewers representing the Federal agencies on the project changed. In the last year of the project many of the new representatives were not aware of events and issues that had been raised during the previous 5 years and they raised questions that had been settled by their predecessors. Some Federal representatives felt that their questions were not given appropriate answers by the project secretary. They felt also that the standard should have specified numbers of accessible features appropriate for applications in Federal buildings rather than placing that responsibility on them. They also did not like the format or editorial style of the new standard, because they did not understand the institute's style requirements and had not seen a final edited and typeset version. The General Services Administration, the Architectural and Transportation Barriers Compliance Board (A&TBCB), the Department of Health, Education, and Welfare (HEW), and Postal Service representatives apparently agreed with each other to vote "no" on the final ANSI ballot.

In the February 5, 1980, *Federal Register*, GSA announced development of a new accessibility standard developed by GSA and HEW. In the February 15, 1980, *Federal Register*, the Postal Service announced development of its new accessibility standard. In addition, the 1978 amendments to the Rehabilitation Act gave the A&TBCB the power to "establish minimum guidelines and requirements for the standards issued pursuant to the Act of August 12, 1968, as amended, commonly known as the Architectural Barriers Act of 1968." With this authorization the Board began developing its own accessibility "standard" for federally funded facilities. The Board has now announced that its new accessibility "guideline" will be out by July 17.

At this time, in addition to the new ANSI national standard, we have new standards for accessibility from GSA and the Postal Service, a new one on the way from the Compliance Board, and several under development as part of 504 regulations. These proposed new standards differ with each other and with the 1980 ANSI standard in scope, application, and technical specifications. After 6 years of hope for some degree of uniformity, the Federal standard-setting agencies are leading us down the path to a whole new generation of conflicting standards for accessibility and the same type of chaos and ineffectiveness we have witnessed for years. There is also a dispute within those agencies as to whether the Compliance Board has authority over them in accessibility issues. The disabled community and the design and construction industry are the unwilling pawns in this ego and territorial power struggle. Accessibility is not being advanced and clearly something drastic must be done to stop this ridiculous proliferation of standards.

## Recommendations

Clearly defined authority for the establishment and enforcement of accessibility standards, a single uniform standard that can be applied to all programs and facilities, and a massive educational program are all essential before physical accessibility can be effectively accomplished under the law. It is with these goals in mind that the following recommendations are offered:

1. A final determination must be made about which agency is going to have overall authority on accessibility standards. That agency should be required to adopt the current ANSI standard unless it can show that it has both broader private and governmental representation and support for its proposed standard and better research and documentation than that developed for the current ANSI standard.

   It must be noted that in adopting the 1980 ANSI standard it will be necessary for each adopting agency to develop an applications manual or other instrument that will specify the number and location of accessible elements and spaces which are required in facilities under their jurisdiction. These application manuals could also contain waivers, exceptions, additions, and deletions for items included in the standard which the agency feels cannot be enforced, or for which changes or additional information are necessary. In this way the integrity of the ANSI standard is maintained, and it can clearly be seen to what extent the Federal application differs from the others.

2. There are some specifications included in the new ANSI standard which will need additional confirmation. Some items were deleted because there was inadequate proof of their value. Additional issues such as life safety, for which no research was conducted are certain to arise. Clearly, the new standard will need to be modified. An objective organization such as the National Center for a Barrier Free Environment (NCBFE) should be appointed and funded to monitor the effectiveness of the new standard and to receive and store comments on it for use in further revision and refinement.

3. The specifications in the new ANSI standard include concepts and specific elements which can be applied to any building type. The standard does not address specialized building types such as libraries, hospitals, etc. Although the general accessibility requirements in the standard would pertain to most areas within such special use buildings, it is conceivable that some additional specifications might need to be developed for portions of those buildings. These supplemental specifications must be developed by the agency

having jurisdiction over those facilities, and they should be incorporated into the application manuals for that agency's facilities. The Architectural and Transportation Barriers Compliance Board should assist with development of these supplemental specifications to ensure that they are compatible with the concepts established in the standard.

4. Additional research should be started immediately to develop more complete standards for access for vision- and hearing-impaired people.

5. A nationwide training program for all types of designers and administrators should be started as soon as the standards are established.

The first effort should be toward existing practitioners to bring them up to date on the content and philosophy of the standard and accessibility. Next, the educational program should find its way into the schools.

## STATEMENT OF RONALD L. MACE, PRESIDENT, BARRIER FREE ENVIRONMENTS, INC., RALEIGH, NORTH CAROLINA

Mr. Mace. Thank you.

I would like to start off with a discussion of what is commonly called "architectural barriers" by requesting that we change the term a bit, because it is my feeling and that of many of us who have been involved in this that the problems of physical accessibility go far beyond architectural issues. They are issues that affect everything, not just architecture and architectural solutions.

The barriers that we are concerned with that affect disabled people and their rights and their abilities to assume their particular place in society are inherent in everything we have, everything that we live with: our parks, our streets, our building sites, the products our manufacturers make, the vehicles that we try to ride on. They are in everything; they are not just architectural barriers.

So I would prefer that they be referred to as environmental barriers. These are the elements that are designed by man and produced by man that cause the kinds of limitations on people with disabilities that we are all concerned about.

The reasons that these barriers exist are very widespread. There are many, many reasons why they exist. You first have to understand that you cannot separate the physical barriers from the attitudinal barriers. Partly they exist because of the attitudes and the understanding or misunderstanding of our educators, our administrators, our architects and designers, and so forth.

I think that becomes fairly clear when you work with a few architects, designers, or manufacturers who do not think that accessibility for disabled people is a real necessity, that it is something that you do for a select few in a few isolated locations. It is not a common experience for everybody who is responsible for designing and building our environment to know about disability. It is not part of the training.

The attitudes of designers are very much conditioned by their training and the fact that in that training process there is no designer and no school of architecture, no engineering school or product design, in which the curriculum in any systematic way discusses the needs of design for children, for elderly people, or for disabled people. It is an area that is totally neglected in most of the schools in our country.

So you can't really expect an indepth understanding on the part of these people who are producing our environment unless they have had a particular personal experience with a friend or a relative or a disability themselves that produces an understanding that they might not otherwise acquire.

The barriers that they produce—I think I might go back for a minute and tell you what happened to me this morning as an example of the kinds of things that happen to a disabled person. To come to this meeting—I am housed in a hotel about 20 miles away because it is the only one that was available with a so-called accessible room. It is in a location where there is no transportation whatsoever to get me here. A van service was to be there at 8 o'clock. This is equivalent to the paratransit you heard of before. It doesn't arrive at 8 o'clock, because it is impossible for them ever to arrive on time. So I left with a cab after the hour they were to arrive. The cab driver drops me off three blocks from here and tells me that is the correct hotel. So I am in the wrong hotel three blocks away.

You should try to get a cab driver to pick you up in a wheelchair and drive you only three blocks. It is hard enough to get one when you are walking. Since I couldn't get a cab to bring me three blocks, I tried to make it over here on my own. It took me almost an hour to get here crossing curbs and getting people to help me at every curb.

This is not an unusual experience. This is an everyday occurrence for someone with a rather severe mobility impairment.

Another example of the attitudes that affect architecture and design became clear to me a few years ago about the understanding that many administrators have and how they cause architectural and other types of barriers to occur. We have laws that require accessibility in virtually every State in the country, and I will elaborate more on those in a minute.

Not very long ago we had a drama school at our university in North Carolina that was a brand new building going up, under construction, and the administrators decided that the drama program was much too demanding, physically demanding, for disabled persons to participate in and, therefore, as a policy attempted to exclude disabled people from the program. So when the building code required that their building be made accessible, they insisted that their building should not be made accessible because, indeed, they were not going to have any disabled people in the program.

The issue there was an elevator that was to be installed in their new building. So there was a process of educating the administrator to understand that it was indeed possible for a disabled person to participate in the drama program.

The elevator was allowed to stay in, as far as he was concerned, but there is a process within construction contracting that is called an "add alternate" so that you may design a building and if there is a part of the building or an element in the building that you think may not fit within your budget, you don't include it in the original contract; you include it in an add or a delete alternate. So the elevator in this case was allowed to stay in the construction contract as an add alternate.

Of course, the prime contract came in for the building and they then decided to take the add alternates for the furnishings and the other equipment in the building and the carpeting and all those things, and because they had used up the budget, they then dropped the elevator. It was not constructed because it was an add alternate for which there was not enough budget money.

It was a technique which was used to eliminate the elevator from that building. So that building today remains inaccessible despite the fact there is a law that says it should be accessible and there is a law that says the program should be accessible.

That was an attitudinal problem. It is not a legal one; it is not a technical one. It certainly could have been done. It was a maneuver specifically taken to eliminate that accessibility feature from the building, even disregarding the fact that it was an element that was advantageous to other people, that everyone benefits from it, which is true in all the architectural accessibility issues that we discuss with people.

As I said before, the training is another reason why barriers exist in our environment. The designer is not educated to know this and he is not going to learn it unless he has a reason to go out and learn it or has an experience that would cause him to.

Another reason is certain misconceptions about what it costs to make facilities accessible. I think this is the thing in the past we have heard more than anything else, that accessibility is an extra issue that costs more than other things. It has been proven time and time again that this is not the case. In new construction there is no cost. There have been studies done proving this, repeated studies, showing that in new construction there are no costs. In remodeling there may be additional costs and these vary from one building to the other very, very widely. So misconceptions, attitudinal problems, lack of knowledge and understanding are the main reasons that these kinds of environmental barriers exist.

The disabled community some years ago, faced with this kind of environmental limitation, appealed to their legislators, first on the State level, for some form of relief. Over the past 20 years virtually every State in the Nation has developed some sort of legislation or building code requirement that calls for accessibility. Today there are mandatory accessibility requirements in every State, and the Federal Government became involved in this new effort in 1968, approximately. The Federal Government had been involved to some extent previous to that, but with the passage of Public Law 90-480, which is commonly called the Architectural Barriers Act, the Federal Government became very much involved in it. That particular law says that any building that receives Federal funding for either construction or leasing should be made accessible.

That law gave the directors of the agencies affected—which were at that time GSA, HUD, Department of Defense, and HEW—the authority to prescribe standards by which those federally funded facilities would be made accessible. The content and application of those standards were left to the discretion of the agency administrators, and I will leave it at that point for the moment.

The second major law that affected accessibility was the Rehabilitation Act of 1973. Section 502 of the Rehabilitation Act established the Architectural and Transportation Barriers Compliance Board. That section established the Compliance Board and gave it authority for ensuring compliance wih the 1968 Architectural Barriers Act.

Then section 504 came into existence and 504, as you all know, covers federally funded access to programs. So the difference is that the Architectural Barriers Act says that buildings must be accessible according to the standards prescribed by the administrators of the four agencies that were affected. Section 504 says that the programs that are in any building must be made available to everyone. Section 504 does not specifically call for architectural accessibility. It says the *programs*, and provides that modification or building accessibility is one of the methods used for making those programs accessible.

In both cases, the 1968 Architectural Barriers Act and under 504—in this case HEW's regulations for 504—the national standard for accessibility was adopted as the standard by which designers would make those buildings accessible. Now, I must explain what that standard is. The standard we are referring to is ANSI A117.1, which was adopted by the American National Standards Institute. The Standards Institute is a private, nonprofit organization located in New York that develops standards for everything. In 1961 they developed a standard for accessibility, the first of its kind in the Nation. When the law was passed in 1968, the administrators of the four affected agencies under the Architectural Barriers Act adopted that standard as the standard for Federal construction. In HEW's 504 regulations it says when there are modifications to be made to buildings in order to make the programs accessible, that they should also be done according to the 1961 ANSI standard or a comparable standard. So we have that same standard referenced there.

When the States developed their building codes during the sixties and the seventies, they also used the 1961 ANSI standard. The problem with all these laws now is that we have between 75 and 100 different ones in the United States. The ANSI standard that was developed in 1961 was a first effort towards prescribing how to design for disabled people. It was relatively minimal. It was developed at a time when attitudes were even far less advanced than they are now. That standard is developed with the consensus agreement of industry, government agencies, disabled groups—all affected groups are to be represented on the committees that develop the national standards for the ANSI Institute. So they were represented, and at that time little understanding, less than we have now, of how to design and of attitudes toward accommodating disabled people existed.

So the standard was minimal then, and as it has been adopted by the States it has been modified because certain things were deleted, certain building types were not covered. The States began developing additional things that they would add in.

Another reason that the States and the agencies began changing the ANSI standard was a misunderstanding about how standards are to be adopted. Let me explain, if I may, briefly. The standard, the 1961 standard, specifies how to make a toilet stall accessible. How do you design it? How do you make a ramp that everyone can use? It does not tell you where to put them or how many to put in the building. That is because the standard would be applied to a wide variety of jurisdictions. States, Federal agencies, or State agencies might adopt that—even corporations might adopt it as their own standard. When they adopt it—they have large numbers of buildings of all types, shapes, and sizes—they might want to apply that standard quite differently in different building types. So if you have a uniform national standard, it must be very general and specify the specifications for the accessible elements. It must leave the applications of those specifications to the agency adopting them, and that was not understood.

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So in many cases when the State legislators, State agencies, and Federal agencies adopted the 1961 ANSI standard, they adopted it totally by reference. They said, "We'll make our buildings accessible according to the 1961 ANSI," and that went on the books, and then it was to be enforced. And when an architect out in the field went and looked at the ANSI standard, it said, "You make the toilet stall 3 feet wide and 5 feet deep." It didn't say to do one on every floor, to do one per building, to paint them green, or what to do with them. It said nothing about how you apply that standard to that building. And because those agencies had not specified the applications criteria for those standards, very rarely was anything ever done, because if an architect put one in the building, then someone was very quickly up there to point out that there were 10 other toilet rooms in the building that were not accessible.

So the standard was not very effective. As a result, the Architectural Barriers Act was not very effective because of the way it was applied. Then, as the agencies began to realize that, they began to modify their own facilities. They began to add the applications criteria and they also began to change the standards. So, as a result of this 10 to 15 years' worth of changes, we now have 75 to 100 different standards on the market.

Now, what that has caused to happen is that in many cases, depending on funding in various jurisdictions, an architect may have as many as three or four of those that apply to the same project. He may try and look through them and find out what he should do, and it tells him to do four or five different things, all of them disagreeing with each other as to numbers, where you put them, what size they should be, and so forth. So what does he do? He may try to find out which one is right. He probably will not get agreement on that. He may try to find out next who is most likely to enforce it on him. If he tried that a few years ago, he would find out that probably nobody was ever going to enforce it on him because there was no review procedure, there was no enforcement mechanism, so why bother? So very often he did nothing and just hoped that nobody would notice, and for many years no one did notice. Then I think some complaints were lodged against architects and lawsuits were brought. The GAO did a study to see how effective the law had been and found that it was not effective, and suddenly we got a lot of activity from the Federal agencies to show that they were meeting their responsibility under those laws.

Part of that activity was to try and develop a new standard, understanding that the old one was out of date, was very minimal to begin with, and that a great deal of confusion existed. Under pressure from various consumer groups, as well as the construction industry, the idea of a single, uniform national standard that would meet the needs of all disabled people, that could be uniformly adopted by every agency, was proposed. In 1974 a contract was awarded to Syracuse University to begin development of a single, national uniform standard for accessibility.

That standard project was to take only 2 years and cost $200,000. The project, because of the enormous complexity of it and the various attitudes or difficulties in getting consensus—everyone wanted to argue, everyone wanted to agree and discuss at length—the project went on for 6 years and ultimately cost over $500,000 in HUD money. It was sponsored by HUD, the National Easter Seal Society, and the President's Committee on Employment of the Handicapped. They served as the secretariat for the development of that standard.

The project went on for 6 years and at this date, today, the new national standard, the ANSI A117.1 1980 version, is coming out. Publications are available.

[Applause.]

**Mr. Mace.** Don't applaud.

[Laughter.]

**Mr. Mace.** In the meantime, many things happened during that 6 years. I will not say that it was a pleasant 6 years; it was a battle. If you try to get 85 organizations or even 2 organizations to agree on something, you know how difficult it is to get consensus. When you have national organizations and a very technical subject that covers hundreds and hundreds of requirements, you can imagine the complexity of it. But after 6 years of arguing, fighting, negotiating, agreeing, settling lawsuits, and final consensus agreement from national organizations representing every interest affected, the standard was approved in December of this year and is now out.

Because it took 6 years, the representatives of the Federal agencies very often changed. There was an appointed person to represent the Federal agencies. So new people came on board and were assigned the job of reviewing the new standard. They very often raised questions that had been raised by their predecessors in the 5 years preceding this. The questions were not always answered legitimately. They might have gotten a response from the committee saying, "This has been settled 3 years ago. If you'll look in your records, you'll find so-and-so." Well, there was an indignant response. "My questions are not being appropriately answered."

In addition to that, the representatives of the four Federal construction agencies felt that the writing was not nice. They didn't like the organization of it, although it had not been put out in the final format yet. Nor did they understand the ANSI publication format and writing style. So they disagreed with that. They also didn't like the fact that the national standard didn't have the appropriate numbers in it for applying it to their Federal facilities. Universally, they looked at it and said, "My God, it doesn't tell us how many to put in the building." They seemed to refuse to understand that it was their responsibility to adopt the technical requirements and to apply them to buildings under their jurisdiction in an appropriate manner.

So the four Federal construction standards-making agencies decided to vote against the ANSI standard on the final ballot, which they did. In February of this year, February 5, in the *Federal Register*, the General Services Administration announced development of a new accessibility standard developed by GSA and HEW to cover their facilities. On February 15 of this year in the *Federal Register*, the Postal Service announced development of their new accessibility standard. In addition, the 1978 Amendments to the Rehabilitation Act gave the Compliance Board authority for establishing what is called guidelines for Federal standards for accessibility.

Last year, with that new authority, the Compliance Board announced that it was developing a new standard for Federal construction. The Board has now announced, with its new Board members', its public members', approval that their new accessibility guideline will be out on July 17. The ANSI standard, as I said previously, is coming out today.

So, after 6 years and millions of dollars in public and private money being spent on a new universal standard for accessibility, we now have new ones from the Compliance Board, GSA, Postal Service, and the national standard. In other words, we are being led down the path toward a whole new generation of differing architectural accessibility standards.

I have looked at them all. They all differ. They differ not only in applications, they also differ in technical requirements; dimensions are different; applications are different; scope is different. In other words, we have not made an inch of progress over the past 6 to 8 years toward a uniform national standard.

The disabled community, the construction industry, and, I think, the taxpayers are being really taken on this, because there is no reason for the technical specifications that go into a standard to be constantly changed. Why should a toilet stall in a GSA building be different from a toilet stall in a VA building? It makes no sense, and it also causes problems and delays and costs that are not necessary in order to accommodate disabled people.

The result of all this is just what we had in the fifties and the sixties and the early seventies, this massive confusion, disagreement, differing standards that impeded progress.

The only thing that would seem to correct the situation is for there to be authority given to one agency to develop one standard, the applications of which to be consistent; that the other agencies be required to accept that. It makes no difference whether it is the Compliance Board or GSA, or whoever it may be, but there needs to be one, and it needs to be applied universally to all facilities.

Now, I have to elaborate on that statement just a little bit because the standard that is out now, the new ANSI standard, is perfectly applicable to all buildings, but it covers general things. It covers accessibility of doors, toilet rooms, entrances, parking, elevators, and all the things that go into most buildings. It does not cover specific building types: libraries or hospitals, for example. It is perfectly appropriate for the agencies with jurisdiction over those facilities to take that standard, adopt it as it is for all general construction requirements, and then to add any specific special requirement that may be unique to hospitals, libraries, or any of the other facilities that may be under their jurisdiction.

So the best thing that we can come up with as a way of doing this is for the agencies to adopt the new ANSI standard as the basic standard for all accessibility. That will cover 95 percent of the facilities we have and the elements within them.

In the process for adopting them, one method would be for those agencies to develop an applications manual that would cover their programs. In other words, in that manual they would say, "We are going to use the ANSI standard for the value of its uniformity. In applying that to our buildings we are going to require that every toilet room in the building comply, that at least two entrances comply, that a certain percentage of the parking spaces comply with that standard." Then, under their jurisdiction there may be a need for them to have certain changes or waivers that would affect their facility, and that is perfectly appropriate also. Those could be put into those applications manuals. In this manner the applications manual would allow all the procedures for applying the standard and leave the standard intact in accordance with the other agencies that have adopted it, and we would have a uniform standard in effect.

Secondly, I think another recommendation I would make is that there be an ongoing process. Although this particular research project for developing the standard made a great deal of progress toward a final standard for all disabled people, there were some research element items that I think no one could even imagine would come up. Some of the disability types—like, for example, the blind and deaf, hearing impaired or vision impaired—have not been adequately researched. There is not uniform agreement on those. You will find in the new standard a few requirements for them on those elements that could be and were researched. So there needs to be an ongoing effort by an objective, third-party organization to continue research on developing the final standards.

The committee developing the standard decided—appropriately, I think—that on those issues for which there is no conclusive proof that these are the right things to do, that these are safe and the exact things to do, that those be eliminated from the standard. So I am not saying that the standard is perfect. I am saying that it is a consensus standard that is as uniform as one can be at this time, and that it should be accepted.

Another idea is that the standards can never be useful out in the field unless the industry, the designers, and the educators understand the philosophy and the attitudes behind the whole thing. There needs to be a massive education process oriented toward the designer and the administrators and the legislators to get them to accept this idea of a single standard and to learn how to apply it in an appropriate manner so that we get uniform accessibility to facilities across the country.

CHAIRMAN FLEMMING. Thank you very much.

[Applause.]

CHAIRMAN FLEMMING. Now we have a number of persons who are going to respond to Mr. Mace's presentation. First of all, I will introduce Dianne Walters who is Acting Chief of the Design Programs Branch of the Office of Design Construction in the General Services Administration. In her present capacity Ms. Walters manages the staff which provides directional goals to architects and engineers who develop programs on barrier-free design, energy conservation, and geotechnical engineering.

Ms. Walters is a member of the Standing Committee on Architecture and Architectural Engineering of the National Academy of Science Building Research Advisory Board and the Administrative and Code Advisory Panel for the development of the new American National Standards Institute for the Disabled.

Ms. Walters, it is nice to have you with us.

## STATEMENT OF DIANNE WALTERS, ACTING CHIEF, DESIGN PROGRAMS BRANCH, OFFICE OF DESIGN CONSTRUCTION, GENERAL SERVICES ADMINISTRATION

MS. WALTERS. Thank you.

In preparing for this consultation, I went to our files on the barrier-free design program and removed the folder marked "Speeches and Testimony" to see what we have said before on the subject of physical facilities and the handicapped. I ran across one which starts:

> The subject of architectural barriers has come up at every one of these regional conferences that have been held over the past 5

> or 6 years. Consequently, everyone by now must be thoroughly familiar with Public Law 90–480, the Architectural Barriers Act of 1968; the Federal Property Management Regulations entitled "Accommodations for the Physically Handicapped"; with the repair and alteration program for installing ramps on Federal buildings; and with GSA's requirements for the handicapped in general.
>
> GSA has received all kinds of favorable publicity on the wonderful things we are doing for the handicapped, so what more needs to be said?

That speech was delivered 7 years ago, and almost every speech in the file said nearly the same thing, except, of course, GSA has not lately received any favorable publicity on the wonderful things we have been doing for the handicapped, or anything else, for that matter.

The point is, why have we been saying the same thing over and over again for 12 years? Is it, as Mr. Mace suggests in his paper, that accessibility is not being advanced and clearly something drastic must be done to stop this "ridiculous proliferation" of standards? Or is it possible that accessibility is being advanced and we don't know about it because we are so busy saying the same thing over and over and over again? Or maybe we are talking to the wrong people. Or maybe we are saying the wrong things. Or maybe accessibility is being advanced and we don't realize it because the acceptable level of accessibility has increased in the past 12 years.

The "ridiculous proliferation" of standards theory supports the latter case. At any rate, it indicates that something is going on out there, that there is an increased awareness to the needs of the handicapped. And increased awareness, as Mr. Mace pointed out in his paper, is the crux of the matter. There is certainly an increased awareness within GSA.

Ten years ago the policy was to comply with the Architectural Barriers Act. Seven years ago the policy was to comply with the Architectural Barriers Act and modify existing buildings to the extent possible within budgetary limitations. Three years ago the policy became comply with the Architectural Barriers Act and retrofit existing buildings to eliminate the then identified backlog of handicapped-related projects. Today the policy extends to identifying additional projects not in the 1977 backlog by resurveying our building inventory.

Ten years ago we patted ourselves on the back for complying with the letter of the law. Nine years ago, in preparing for testimony to Congress, a question was anticipated. The question: "What specific problems or complaints have you had on particular buildings?" [The answer:] Two recent ones.

We received a letter indicating that a group of handicapped constituents had difficulty entering portions of the Eisenhower Library in Abilene, Kansas, and viewing the inscriptions on the Eisenhower Memorial. These buildings were donated to the Federal Government prior to passage of the act and did not involve Federal funds. Thus, they are exempt from its provisions. However, alterations made subsequent to the passage of the act would be subject to it. An alteration had been made to make both the library and the museum accessible by way of a rear parking lot, and also the chapel is accessible. However, neither the Memorial nor the Eisenhower Home is accessible and alterations to either of them would not be possible without destroying the esthetic and historical value. Consequently, we have requested our regional office to take the following action in order to make the facility more accessible:

- See if it is possible to provide and, if so, provide identification of signs or markings to direct handicapped visitors to the parking lot and ramps at the rear of the museum and library.
- See if it is possible and, if so, provide copies of the inscriptions on the Memorial at a lower level where they can be read by a person in a wheelchair.
- See what can be done to make the Eisenhower Home at least partially accessible to the handicapped. This is a typical 19th century frame house with stairs and narrow doors, and complete accessibility may be impossible if the house is to be substantially preserved.

We also received an inquiry relative to the new mall at Twin Falls, Idaho, and the Idaho State Vocational Facilities. One of the constituents had indicated that neither of these facilities was accessible to the handicapped and he understood both were federally funded. We found only the Twin Falls Mall to be federally funded, in this case jointly funded by HUD and the Small Business Administration. It was the opinion of the legal counsels of both agencies that this project was not subject to the act. However, in a letter to our Assistant Administrator, the Assistant Secretary for Administration at HUD indicated that since receipt of our inquiry to him consideration was being given to making the entire mall area more accessible to the handicapped even though not required by law.

Today we couldn't have taken that sort of position in front of a congressional committee, but today we also get a different kind of complaint. We have been getting complaints about the money that we are spending to retrofit buildings to make them accessible to the physically handicapped.

Next week I am leaving for Chicago as part of a team to conduct design technology workshops which will cover quality control in building through predesign programming, energy conservation, and barrier-free design. The message at those workshops is going to be the same one that we have been preaching for over 12 years: awareness, awareness of the laws, the regulations, the standards, the processes; but mostly awareness of the needs of handicapped individuals because only through increased awareness will increased accessibility be achieved.

Thank you.

CHAIRMAN FLEMMING. Thank you very much.

[Applause.]

CHAIRMAN FLEMMING. The printed agenda contains the name of Mr. David L. Williamson and his card is up there right now, but it is perfectly clear that Mr. Williamson is not here. He thought he might be able to make it the last minute, but he has asked Ms. Margaret Milner to represent him. She is an architectural barriers specialist, Office of Independent Living for the Disabled, Department of Housing and Urban Development.

Ms. Milner is an architectural barriers specialist who is responsible for reviewing all architectural accessiblity requirements in all HUD programs. The Office of Independent Living for the Disabled undertakes the development of technical assistance materials for use of architects and developers in relation to accessible housing.

Before joining the Department of Housing and Urban Development, Ms. Milner was a private consultant specializing in planning for handicapped people. She was the first director of the National Center for Barrier Free Environment in Washington, D.C.

We are very happy to have you with us.

## STATEMENT OF MARGARET MILNER, ARCHITECTURAL BARRIERS SPECIALIST, OFFICE OF INDEPENDENT LIVING FOR THE DISABLED, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MS. MILNER. Dave sincerely regrets that he could not be with you here today and had hoped that he would be able to join the group. Since he is not here, I will do my best to fill in for him.

I would like to say, first of all, that I concur with and endorse Ron Mace's paper. Indeed, the inaccessible building or the inaccessible environment is perhaps the ultimate form of discrimination, and we at HUD are certainly committed to helping create accessible communities and accessible housing.

In particular, HUD endorses the concept of the single uniform standard that Ron so eloquently talked about today. The logic of the single standard is so compelling, in fact, that HUD felt it worth investing half a million dollars in the effort to produce the 1980 ANSI standard. We had hoped that this standard would be the instrument for achieving uniformity in accessibility requirements. While that goal still appears to elude us, we do feel that it was a worthwhile investment. The 1980 ANSI standard is, I feel confident, the best-researched, most comprehensive accessibility standard that is available in the country today, and we hope that it will be widely used by State and local governments and by private interests.

I also endorse the five recommendations that Ron presented at the end of his paper. In particular, I think that his recommendation that we begin now on the process of preparing for the revision for the next generation of the ANSI standard is particularly worth doing. We feel that there is additional research that should be done and, furthermore, we need to glean the experience of using this ANSI standard in order to judge where it can be improved. This should be an ongoing process. The standard, by institute policy, has to be reviewed every 5 years. If we find it needs to be revised sooner, that can be done, too.

I also think that it is impossible to overemphasize the need for educating architects and designers about accessibility requirements. In my experience, most of the architects I have met are willing to design for handicapped people and, in fact, find it an interesting challenge, but they have to know what is required. Here again is an example of how the ANSI standard can make a significant contribution.

I would like to look briefly at the kinds of things that we at the Department of Housing and Urban Development are doing for handicapped people. The Office of Independent Living for the Disabled is the focal point at HUD for policies and programs to serve handicapped people. Our goal is to integrate the handicapped individual into the mainstream of society and we try to interpret this and implement it in all the programs of the Department. We try to do this by redirecting the goals of existing programs and, where we find that there are gaps in service, we develop new programs.

I will mention some of the things that we have done over the last few years that I think are significant in the area of meeting the housing crisis that is such a serious problem for handicapped people. We have instituted barrier-free percentage requirements in all new construction for public housing and section 8 new construction or substantial rehabilitation. These are the primary HUD programs for providing family housing, and 5 percent of the units in all new construction must be accessible to the physically handicapped. Furthermore, we have a policy of ensuring that the accessible units represent a range of housing types, offering one and two bedrooms or efficiency units, and we encourage that developers scatter these units across their projects, or, if it is a multisite development, across sites, so that the disabled individual will have the widest possible choice of type of housing and location of housing.

Until recently residents in group homes for disabled were not eligible to receive section 8 rent subsidies. The Department of Housing and Urban Development rewrote its regulations so that we are now able to make those subsidies available to residents of group homes.

In addition, a key element in dispensing HUD funds to the local level is the housing assistance plan in which each local government must set forth its housing needs and establish its priorities for meeting those needs. We now require that the handicapped population be considered as a separate category to ensure that those needs are considered when each local government makes its assessment of the housing needs it intends to address within the next 1 to 3 years.

In our community development block grants program, funds can be and have been used to fund a variety of projects that benefit disabled people. This can include removal of architectural barriers in the community. It can include making planning grants to providers of housing and other services for handicapped people. It can include development of centers for the handicapped. But in all our programs the driving principle is the integration of the handicapped into all aspects of community life.

I should mention a couple of other things that we do. Our section 202 construction loan program originally was intended to develop housing for the elderly. Then we added disabled people to the eligible category, but initially they had to compete with sponsors of projects for the elderly for funds. Interestingly enough, we found that generally the elderly projects were much more successful in getting their money, probably because they tend to be larger units and are, therefore, more economical to develop. So now we set aside funds each year under the 202 program to provide housing for nonelderly disabled—$50 million this fiscal year.

Other elements of the disabled population who are frequently discriminated against in ways other than architectural barriers are those with developmental disabilities and the mentally ill population. We at HUD are concerned with providing housing for those groups as well. In particular, we are now in the third year of a demonstration program in cooperation with the Department of Health and Human Services to provide group residences for chronically, mentally ill people who are being returned to the community from institutions. As of the end of this fiscal year, we will have spent $80 million on this program. Close to 200 sponsors of group homes will have been funded in 39 States.

Having the programs for handicapped people does not help if no one at the local level knows how to tap those funds, so another project that our office has been involved with over the past year is a series of national technical assistance seminars, where we bring together consumers, builders, developers, and representatives of State and local governments and present information about how to put together a package of housing and services and get it to the people who need it. We have completed 10 seminars and are planning to start a second cycle of another 8 seminars in the fall. We feel that has been a very worthwhile effort.

In addition to the ANSI funding, HUD has funded a number of other research studies, among them two studies of public housing projects. As you may know, public housing funds something like 1.3 million homes in 10,000 projects across the country, and we feel that this is one of the most important avenues for making housing accessible to disabled people. So we have had two research projects in this area, including one in which we gave $5 million to nine public housing agencies to see how much it would cost them to make accessibility modifications in selected facilities. The information from these projects will be used in planning alterations to the entire stock of public housing.

I also think that it is relevant to what we are talking about here today to mention something else HUD has been following closely recently, and that is the amendments to the Fair Housing Act that have been in Congress this session. The House bill is now out of committee and is expected to be on the floor soon. We do anticipate there may be some floor amendments. But as it now stands, under these amendments, handicapped people would become a protected class with the same status as women and racial, ethnic, and religious minorities and would have standing to bring action against landlords, sellers, and others in the housing chain who allegedly discriminate. Under this act the definition of handicapped is similar to the 504 definition and is intended to be interpreted consistently with 504 regulations. However, it has been amended to exclude "current drug or alcohol abusers" and "individuals with any impairment that may constitute a direct threat to the safety or property of others." We are concerned that this may be a setback to developing community-based residential centers for mentally ill and developmentally disabled people.

The section of the act that relates more specifically to what we are talking about here, architectural barriers, is that under these amendments the landlord cannot refuse to allow a prospective tenant to make necessary modifications for accessibility, provided that the tenant pays for the modifications, and that upon terminating the lease the tenant will agree to remove the modifications at his own expense unless the landlord chooses to retain them. The only exception is cases where the modification would be judged to be such that the building could no longer be used for its original purpose. In the case of sales of houses under new construction, builders cannot refuse to make access modifications as long as they have no additional cost or as long as the cost could be added to the mortgage of the house.

A companion bill is now in the Senate, awaiting committee markup. It does include a provision to prohibit exclusionary zoning or land-use practices that would prevent group residences for handicapped people from being established in residential communities. This provision was stricken in the House bill. But we feel encouraged that these amendments are being considered and are certainly hopeful that they will pass this year. We think it is an important step forward and, as Dianne Walters says, we are making progress even though sometimes it is hard to discover it.

Thank you very much.

CHAIRMAN FLEMMING. Thank you very much. We appreciate it.

[Applause.]

CHAIRMAN FLEMMING. The last member of the panel to comment on Mr. Mace's presentation is Mr. John Collins III, president of Van Go Corporation, located in Alexandria, Virginia. Mr. Collins founded the Van Go Corporation, which provides transportation vehicles for the mobility impaired. Until March 1980 he was senior research associate with the Institute for Information Studies in Falls Church, Virginia. In that capacity, he managed the production of the emerging issues reports that repackaged relevant knowledge for target audiences of disabled individuals. Mr. Collins also consults with various groups concerned with transportation of and delivery of services to the handicapped.

Mr. Collins, we are very happy to have you here with us today.

## STATEMENT OF JOHN D. COLLINS III, PRESIDENT, VAN GO CORPORATION, ALEXANDRIA, VIRGINIA

MR. COLLINS. Thank you. I am very glad to be here but I am even more pleased that the Commission is here, because I feel that a lot of very good things will happen for all of us out of this. Your interest is really a great step in the whole country becoming more aware of what needs to be done and more able to accomplish the goals.

In talking about environmental barriers, let me support what Ron Mace has said. He has written the best standards, the North Carolina standards, which have been what most of us have used and pushed as consumers. It really is a step backwards to see so many problems come up. That has really been a lot of the problem with the whole disabled community movement because people keep bringing up definitions and asking for numbers, yet a lot of models just don't have good answers and they won't have for a long time because it is so complicated. All of us are either temporarily able bodied or disabled in terms of the many things that can happen.

I would like to tell a short story about environmental barriers by telling about another commission, one very close across the river here, the Arlington County Board. Arlington is a small area, only about 25 square miles. Four years ago the county board started becoming interested in the disabled as they had seen several people at the county board meetings that had specific concerns asking for different things to happen in the county. But there really were a lot of barriers, such as all the county employment offices were in a building that was up six steps and the elevator, which was in the back entrance, was often broken. There were other problems relative to disabled citizens that they really didn't know how to resolve. So the county board, in its wisdom of being able to make decisions, decided that disabled citizens really ought to come up and make some proposals to us and we use money from HUD to study some of these.

Our first decision was to remove some of the barriers, to have a small housing project that would be, say, several apartments in a low-income area in Arlington, and out of that a lot of things would happen. The people living there would start proving that the best things to do are what they themselves do in their daily lives—like Ron's example of his horrible transportation problem this morning, events like that pile up and become everybody's experience.

We also asked if they would allow us to do some demographics because the county is a microcosm of the rest of the world. It is a small area; it is rather old. It has grown up and the county has the money around it that it can put into social programs, so it is a good place to live and it has a lot of benefits. They decided to go ahead and do the housing project, but not to do the demographic study.

Well, 2 years later they still had not released the money. The county board changed its mind and decided to do that needs assessment, which they call their demographics study.

Because they had all, in that time, become aware that there are just so many needs about disabled people, one of the first things they found was that Arlington was a very hard county to get around. There are only two main bus lines and those were not yet accessible. Disabled people are hard to find and we are going to have to do a lot of work to be able to know that the programs of Arlington County really do have disabled people in them.

Another factor about the employment program was that you couldn't sue. There aren't handicapped people in the Arlington County Code, so if you did have an employment discrimination problem, you couldn't have any kind of access to the courts because they didn't have it as a basic right. I think that was covered well yesterday, the important right to go to court.

Next the county board discovered they weren't using much of their money very well. They had a lot of people on social security. They had a lot of people receiving medical benefits. They had a lot of cases on the vocational rehabilitation case roles. But those monies really were keeping people from using the programs and going back to work if they had the ability to go to work in a program, or if they had not worked to get into a training program, because all of the training programs for handicapped people were in one place in the county and that was only on several bus lines.

Together we started discovering the solutions. The county board had become slowly individually aware. I think that has had the largest changes. The different board members and their staffs have all become aware of some of these problems. They learned that there are targeted job tax credits, that employers can get tax credits to employ disabled people. So now the private sector is starting to take over a lot of these jobs and starting to hire the people that were not finding jobs. They are also finding that Congress has extended the tax write-off for removing architectural barriers and there is starting to be interest in that. Employers and businesses in the county are starting to make inquiry into where they can get the information for the tax credits so that they can take advantage of the credit program that they really had no interest in and had no awareness of in the first 3 years of that program. So there really have been some very good improvements that are just starting to happen.

Now there are disabled people at most of the county board meetings who are starting to use the county processes, and that is what I see the U.S. Commission on Civil Rights will be able to do in your identification of some of these key problem areas facing citizens with disabilities.

Yesterday the EEO person from American Telephone and Telegraph was here explaining some of their personnel policies. I thought it was very good that he mentioned that there should be a resource bank, when in fact the telephone was originally discovered as a device for the deaf. There are a lot of examples of disabled people using devices, individually making the environment better for everyone.

The 36 million disabled people is a figure that we can all support no matter how many censuses—it will take several generations to count all those people because of all the environmental barriers that keep people from being part of the mainstream.

I would like to leave the rest of my time for questions because I do think that this group has left a lot of things in the air with the several standards of architecture being added to all these issues before the Commission.

Chairman Flemming. Thank you very, very much. We appreciate your contribution.

Commissioner Saltzman?

Commissioner Saltzman. Mr. Mace, in your paper you made reference to studies showing that the construction cost to make facilities accessible to all sometimes can be accomplished without significant increase or sometimes even at less cost. Do you have those studies that you made reference to, or do you know what they are?

Mr. Mace. Yes.

Commissioner Saltzman. Can they be furnished for the record?

Mr. Mace. Yes, they can.

[This information is on file at the Commission. Dave M. O'Neill, "Discrimination Against Handicapped Persons/The Costs, Benefits and Economic Impact of Implementing Section 504 of the Rehabilitation Act of 1973," May 1977 (prepared under contract for the Office for Civil Rights). Ronald I. Mace, "Accessibility Modification, Cost Analysis," 1976. U.S., Department of Housing and Urban Development, "Estimated Cost of Accessible Building." U.S., Department of Housing and Urban Development, "Cost-Benefit Analysis of Accessibility."]

Commissioner Saltzman. One of you—I'm not sure—made reference to other studies that HUD is making at the present time.

Ms. Milner. Well, HUD has funded several research projects in the area of serving the handicapped, the ANSI standard being the most significant, and from the ANSI standard project a series of six different publications have been distributed on different technical aspects. Some of them are related to the cost of accessible designs. Some are related to specific requirements of different disability groups.

Commissioner Saltzman. Are those available?

Ms. Milner. Yes.

Commissioner Saltzman. Could those studies, Mr. Chairman, be entered into the record relative to cost projections for accessibility?

Ms. Milner. An additional HUD study that you might be interested in is one that is related to public housing, integrating the handicapped in public housing. I can make that available, too.

Commissioner Saltzman. Fine.

Chairman Flemming. We will have the studies made available and the summaries can be inserted in the record at this particular point.

[See U.S., Department of Housing and Urban Development, "Study and Evaluation of Integrating the Handicapped in HUD Housing," May 1977.]

Chairman Flemming. Commissioner Horn?

VICE CHAIRMAN HORN. Mention has been made of the competing standards which we have from Federal agencies. We have GSA, HEW, Postal Service. We have the new standard issued by a voluntary group, the ANSI standard.

Usually in an organization when you have line agencies such as HUD, which apparently favors the one national standard, opposing another line agency or a staff agency such as GSA that disagrees and that sort of strange collection known as the Postal Service, these issues escalate within the organization to the Office of the President or the staff agencies that represent the President, OMB, White House Domestic Policy staff, etc. To your knowledge, was the Federal Government unable to get along with any standard which then escalated to the Executive Office of the President or OMB for resolution?

MS. WALTERS. The enabling legislation, the Architectural Barriers Act of 1968 as amended, does not require that we all have the same standard. It specifically permits four separate standard-setting agencies, simply requiring that we all consult with the Department of Health, Education, and Welfare in the prescription of those standards. That consultation presumably is to ensure that there is some appropriate level of uniformity.

VICE CHAIRMAN HORN. Does the act require you to have separate standards?

MS. WALTERS. It doesn't require that——

VICE CHAIRMAN HORN. It permits you.

MS. WALTERS. It simply requires each of those agencies to prescribe a standard.

VICE CHAIRMAN HORN. Well, yes, but it just seems to me—as an executive of an organization, if I had that situation, you would all be around the table pretty fast and we would be trying to see if we couldn't work out some common ground.

MS. WALTERS. Well, the Department of Defense is responsible for establishing or prescribing the standard with respect to military facilities, the Postal Service with respect to postal facilities, the Department of Housing and Urban Development with respect to certain residential facilities that are funded under some of their programs, and the General Services Administration for all other facilities that are subject to the Architectural Barriers Act.

VICE CHAIRMAN HORN. But what do you think of the argument that is made that Federal agencies should have adopted as, at least, the preamble and basis from which to develop specific applications the acceptance of this new 1980 standard of the American National Standards Institute? Is that not a feasible and reasonable position to take?

**Ms. Walters.** I have no quarrel with the concept of a uniform baseline standard, but there are certain discrete things that happen in a wide range of facilities that would require varying levels of accessibility. It is not uncommon in all sorts of building codes to have a baseline standard and then, based on different occupancy classifications, vary the requirement.

**Vice Chairman Horn.** Well, I understand that, but you do agree that it would not—it would be unwise to have a baseline standard and then if there were a certain uniqueness specialization, to have particular applications, that at least people would have that base upon which to rely.

**Ms. Walters.** There is no quarrel with the concept of a uniform baseline standard.

**Vice Chairman Horn.** But do the GSA standards incorporate this new standard as a baseline standard? They don't, as I understand the testimony.

**Ms. Walters.** To the greatest extent possible, the GSA standard uses the 1979 draft version of the new ANSI standard. That was the latest draft available. It uses most of the technical data as the basis for the new standard. But it does completely reformat the document.

**Vice Chairman Horn.** Mr. Mace, have you had a chance to set up some sort of a matrix and analyze the base standard in terms of the specific applications that GSA, HEW, the Postal Service, etc., are now applying, and, if you have, do you see any cost differential in those specific applications? In other words, let's put it in terms of the handicapped: Is it saving money for government to have these specialized agency standards and, therefore, depriving the handicapped of access, or do we really know? Has any body analyzed that?

**Mr. Mace.** No, it is not saving anybody money for these agencies to have different standards. I can give you—they seem harmless when you look at each one, but I can give you a specific example because accessibility standards are very specific. We are talking about inches, fractions of inches in the technical specifications, not in the applications of them, how you apply them to buildings.

Take, for example, the requirement for a simple lavatory in a toilet room. If one agency says it has to have 29 inches clearance underneath and that the rim height above the floor has to be 34, you have a tolerance of 5 inches there, and that has been researched, for example, in the ANSI research project to know that the manufacturers of those projects make a unit that will fit, as a standard product on the market, that will fit within those tolerances.

Then somebody in one of the agencies in their divine wisdom decides that they are going to make it 30 inches and 33 inches because they think that might be better. What they have done is eliminate half of the products that are on the market that fit within that tolerance.

So then a manufacturer, in order to furnish a fixture that will be acceptable within that agency's facilities, has to manufacture an element that is special in order to fit that standard, and that is an extra cost item. The industry will respond to that. They will put it on the market at extra cost. And, yes, it costs the taxpayers extra money, if you want to look at it from that standpoint.

It also— —

**Vice Chairman Horn.** But it is a self-inflicted wound, is what you are saying.

**Mr. Mace.** Yes. And it also—and it is done innocently and inadvertently by someone thinking they have done a better thing by changing the standard to something that they think—without the basis of research and the consensus of opinion of manufacturers and others who have really looking into it in very minute detail.

And then the other cost issue that is there is—and one that affects the attitudes of those who create our environment—are the differing standards and delays that it causes to a practitioner, for example. I think those affect disabled people in a very important way.

If the industry out there is trying to do—and universally in going around the country and working with them, I have heard industry and private enterprise say, "Please, for God's sake, decide once and for all what you want and we will produce it." In our society, mass production is used to keep costs down and we have uniformity for that reason. The thing that turns industry against the whole idea of accessibility and that generates the complaints of, "My God, look at the cost you're giving me," is the special item plus the time that it takes someone out there in the field to figure out which one of these standards should be used. "This agency is saying that, but my local building code is saying I have to do this, and they both say they have jurisdiction." That time is lost time and that is expensive time for industry. So they say, "Look at those handicapped people that are out there demanding these regulations. I'm overregulated. I'm up to my neck in regulations."

We did a project last year with private enterprise for the Compliance Board to get to the executives in the major industries across the country. It was 100 percent unanimous, "Please give us a single standard that all the agencies follow and we will reduce costs and we will get uniform accessibility."

**Vice Chairman Horn.** On page 8 of your paper you refer to section 504. Are you aware of any exemptions that have been granted in federally funded programs where they do not have to come under 504, in terms of architectural barriers?

**Mr. Mace.** Section 504 is very loose in its requirement for architectural accessibility in that it says modifications made—this is HEW's regulation—modifications made to achieve program access should follow the 1961 ANSI or other [standard] that will assure an equal degree of accessibility.

**Vice Chairman Horn.** Is GSA aware of any exceptions made where certain federally funded programs do not have to follow 504?

**Ms. Walters.** I am not personally aware of any.

**Vice Chairman Horn.** You are not. Because I had heard, and I didn't quite catch it, that there was some testimony that LEAA, Federal Bureau of Prisons, was exempt. I just wonder if that was a mistake or what.

**Chairman Flemming.** Our problem there is that many of the agencies have not——

**Vice Chairman Horn.** Issued the regulations.

**Chairman Flemming.** —issued regulations yet, so we don't know.

**Mr. Mace.** And as their regulations are—the others are not out yet, most of them. I didn't mention earlier that some of the agencies coming out with their 504 regulations are also proposing whole new standards for accessibility under 504.

**Vice Chairman Horn.** One last question, now. This ANSI standard, which would be used by most of American industry, would it, in their buildings? Or would it be mostly in governmentally imposed building codes?

**Mr. Mace.** It was before. When the first one came out, it was billed as the national standard for accessibility and it was pretty much universally adopted. It would be adopted now by industry and by States if they knew that that was the one that the Federal agencies were going to——

**Vice Chairman Horn.** Well, what I would like to elicit from you is a sort of "yes" or "no" answer. Does this mean that in the new 1980 ANSI standard the private sector of the American economy and those who follow it might be ahead or behind the various Federal agency standards that are being promulgated in terms of access for the handicapped?

**Mr. Mace.** Ahead or behind?

**Vice Chairman Horn.** Yes.

**Mr. Mace.** What do you mean?

**Vice Chairman Horn.** In the sense of which standard, from the standpoint of the handicapped concerns, is better to be followed? Do we have the anomaly here that the private sector would actually be ahead of GSA, HEW, and the Postal Service if they followed the new 1980 version, or have the Federal agencies thought more carefully about protecting the needs of the handicapped?

**Mr. Mace.** The Federal agencies have not more carefully considered the needs of the handicapped. They have considered their obligations under the law and they have made efforts to comply with those.

Private industry was involved in the ANSI standard development. Every sector of it was represented in technical matters in developing that standard. I would say, yes, industry is universally behind that voluntary standard rather than having multiple agency technical regulations.

**Vice Chairman Horn.** Does GSA differ with that as an agency position, or would you be in a position to tell us?

**Ms. Walters.** You mean as to the superiority of any——

**Vice Chairman Horn.** Superiority in terms of access for the handicapped—does following the 1980 ANSI standard as revised, now issued, provide greater access in general than do the separate, more detailed agency standards, which are being promulgated by your agency, HEW, Postal Service, etc.

**Ms. Walters.** Access to which group of handicapped individuals? The question becomes extremely complex.

**Vice Chairman Horn.** Okay. Well, physically handicapped.

**Ms. Walters.** I don't think that there is any real way that you can say that one standard is better or worse than another except in a very, very gross sort of way; i.e., obviously, the 1961 version of the ANSI standard is generally recognized as unacceptable and anything that goes beyond that is better, but is the 1980 version of the ANSI standard better than the North Carolina State Code? That is——

**Vice Chairman Horn.** Well, that is what I am after.

**Ms. Walters.** There is no real sort of objective instrument for saying that. And it could depend, too, on which type of physical disability you are talking about providing assistance——

**Vice Chairman Horn.** Well, this is why I asked my matrix question earlier. It seems to me now that we have this sort of evolving confusion here, that it might be useful if HUD again dipped into its pocket, with or without the Easter Seal group, and funded an analysis of what does the ANSI standard really mean by types of handicapped and subhandicapped in relation to GSA, HEW, Defense, and the Postal Service? I think that this ought to be laid out so that the agencies and the executives of the country can try to bang some heads together if we are to avoid another decade of confusion. That is my concern as an administrator.

I just can't imagine this kind of promulgation of regulatory policy. They might be right. I don't know if they are right or wrong. That is my problem. I don't have a comparison analysis that tells me if they are right or wrong. So that is what I am fishing for and I think HUD ought to fund that kind of effort.

CHAIRMAN FLEMMING. I would like to follow up with just one question addressed to Ms. Walters. It goes back to Commissioner Horn's earlier question.

To the best of your knowledge, has there been any meeting at the White House level, or called by someone at the White House level, of the appropriate agencies to consider the question of whether or not Federal agencies should endeavor to conform to this one standard that has just been promulgated?

MS. WALTERS. As far as I know, no such meeting has been called.

CHAIRMAN FLEMMING. Thank you very much.

Commissioner-Designate Ramirez?

COMMISSIONER-DESIGNATE RAMIREZ. I just have one question. I found the last discussion very useful.

My question is to the representative for Mr. Williamson, whose name escapes me at the moment.

CHAIRMAN FLEMMING. Ms. Milner.

COMMISSIONER-DESIGNATE RAMIREZ. Ms. Milner.

Mr. Mace talked a great deal about the need to train architects to be sensitive to these needs. He talked about the curriculum in schools of architecture, etc. I recognize that the standard in itself will be a powerful force in this direction, but I am a little bit more concerned about whether in those projects that are cooperative training endeavors between HUD and schools of architecture or urban planning—I don't know the exact nature of those programs, but are we in HUD doing anything to ensure that disabled people themselves are being trained in those programs?

MS. MILNER. That is a very interesting question and I will have to say I am not aware of any specific programs for cooperative training within HUD. I am not a longtime HUD employee so it is quite possible within that vast Department there are some such programs that haven't come to my attention.

But within our program in the Office of Independent Living perhaps you are referring to our technical assistance projects, in which we do indeed ensure that consumers, disabled people, are active participants in all our technical assistance projects and indeed encourage consumer participation in our community development-funded projects and other programs. We do encourage it and do try to provide assistance to disabled people. In fact, one of the main purposes of our office is to provide information, resources, and technical assistance to disabled people in order that they can help themselves.

CHAIRMAN FLEMMING. Commissioner-Designate Ruckelshaus?

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**Commissioner-Designate Ruckleshaus.** I was very interested, Mr. Mace—in your summing up you raise two issues. I think we can agree that having a uniform standard would be desirable, although it seems to be very difficult to arrive at such a standard. And even at the end, when you outlined how desirable it is, there are quite a few exceptions and annotations. We are talking, I guess, about a very baseline sort of one general standard to which all kinds of exceptions and specifications can be added.

But would it necessarily be true that different standards would be less? Couldn't you have several standards? Apart from the issue of confusion and desiring to have one national standard, could you have several standards which answered the same needs, that advanced accessibility?

**Mr. Mace.** You mean, different——

**Commissioner-Designate Ruckelshaus.** I thought the thrust of your paper came down mostly on the proposition that the national standard was lost. Was there also accessibility advancement that was lost?

**Mr. Mace.** Yes. Yes, very definitely, in the new ones that are coming out. The research for developing those technical specifications was very thorough. It tested disabled people. It tried them for reach ranges, an approach to equipment in buildings. It tried them opening doors and transferring onto toilet stalls and found those designs that were optimum for those individuals.

Now, in the standards that are developed following that, they are developed very much the way ours was and the way many others are, with a—not based on any kind of empirical testing in a systematic way.

The Compliance Board right now is working on developing its Federal guidelines for standards, and it is being done by a committee with people sitting around and saying, "Well, I like 30 inches," and "I think 28 is good," so "Why don't we compromise and make it 29?" Now, that is not any kind of systematic development of a standard. It is all based on opinion and it is arbitrary.

To that extent, yes, we have lost a great deal of accessibility in the standards that are proposed right now by GSA and the Postal Service and the Compliance Board.

**Commissioner-Designate Ruckleshaus.** Let me ask Ms. Walters, then: Is that in fact how the standards were arrived at at GSA? Was industry consulted and was the client group involved in drawing up of——

**Ms. Walters.** No. The standards were not developed by committee.

**Commissioner-Designate Ruckleshaus.** How were they developed?

Ms. Walters. We have an organization that is the Criteria and Research Branch that generates specifications for our design and construction program. They were developed within that unit, again using the 1979 draft of the ANSI standard as a basis for their technical data.

You have to remember the General Services Administration has a representative to the A117 committee and it, by the way, has been the same voting representative for the entire 6-year process of developing those standards. I was a member of the code advisory panel which assisted in the development of those standards. So we have had access to the state of the art report, the research, etc., etc., that was done in the development of the ANSI standard.

Commissioner-Designate Ruckelshaus. Why did GSA get out of that?

Ms. Walters. You mean why are we not fully supporting adoption——

Commissioner-Designate Ruckleshaus. Yes. You were part of the process——

Ms. Walters. And we are still a member of the A117 committee. It simply is that we voted negatively on most of the ballots for the standard.

Commissioner-Designate Ruckleshaus. For what reason?

Ms. Walters. The chief reason is that, in our opinion, the format of the proposed new standard, at least with respect to the '79 draft—and I keep saying that because as far as I know nobody has seen what is going to be published today—at least with respect to that '79 draft, the document is so heavily cross referenced as to make it extremely difficult to use. Now, I am also a registered architect, and I have worked in the private sector, and I have designed buildings. I sat down and tried to figure out how to find out some information that I would need using that '79 draft. I placed myself not in the position of the architect, but in the position of the draftsman who is sitting at the board turning out the working drawings, which is where all the details for this happen. I had trouble finding the information that I needed to put into the drawings. It is highly unlikely that if I am having trouble finding it that a draftsman is going to spend the necessary time flipping through four and five different cross references to find all the information that is needed.

Commissioner-Designate Ruckelshaus. Your objections were questions of format and not technical specifications?

Ms. Walters. For the most part it was probably format. We do have some question with some small parts of the technical requirements and, in fact, the validity of the research that was used in developing——

**Commissioner-Designate Ruckleshaus.** Was any attention given to the other departments that dropped out of that consultation process or at least didn't go along to the end—did any of those agencies work together to develop standards? I wonder why there couldn't have been at least fewer standards issued by having those groups that couldn't accept the ANSI standard agree to accept one other standard.

**Ms. Walters.** Well, at the Federal level, the largest possible number of standards that you are going to have issued that have any bearing with respect to the Architectural Barriers Act is four: Defense, Postal Service, HUD, and the General Services Administration. That is it. There are only four standards-setting agencies.

**Commissioner-Designate Ruckeslshaus.** Well, they are all making their own standards, though.

**Ms. Walters.** Well, apparently Congress had some reasons for designating that number of agencies in the first place, the basic reason being the distinct differences between the mission of the Department of Defense, the Postal Service, and the residential aspects of HUD's mandate. Those are three obviously distinct and discrete types of facilities, aside, too, from the fact that the Postal Service is quasi-Federal. The General Services Administration prescribes the standard that is applicable to all other facilities subject to the Architectural Barriers Act.

**Commissioner-Designate Ruckleshaus.** I assumed that all those other departments went through committee meetings and hearings and consultations with the same end in mind, to advance the accessiblity and to develop format, and it just seemed——

**Ms. Walters.** At the least, everybody has to consult with the Department of Health, Education, and Welfare.

**Commissioner-Designate Ruckleshaus.** But you didn't consult with one another.

**Ms. Walters.** Well, I was not personally involved in the standards development process. I know that we consulted with the Department of Health, Education, and Welfare and with staff of the Architectural Transportation Barriers Compliance Board. Whether there was any communication between GSA and the Postal Service in the development, that I can't say.

**Chairman Flemming.** Just following up on that, will you have any obligation to confrom to the Compliance Board guidelines when they are issued?

**Ms. Walters.** Very interesting question. What do you do when you are caught between a rock and a hard place?

**Chairman Flemming.** If it is an unresolved issue, just say so.

**Ms. Walters.** Well, let me put it this way: GSA, for legal purposes, is still using the old 1961 version of the ANSI standard. All we did was come out with a notice of proposed rulemaking that kicked up sufficient flak.

**Chairman Flemming.** That's right. You have not issued a notice of final rulemaking.

**Ms. Walters.** That's right.

**Chairman Flemming.** Now you are on notice that the Compliance Board is going to put out guidelines in July, I gather from the testimony, and I gather the question of what impact those guidelines would have on your standards is possibly an unresolved issue yet.

**Ms. Walters.** Yes. It gets really kind of muddled. I mean, ATBCB is supposed to establish the minimum guidelines that are to be used in the development of standards to be prescribed pursuant to the Architectural Barriers Act. The Architectural Barriers Act requires that we consult with the Department of Health, Education, and Welfare. Well, we have been working with both of them in the development of the document. Maybe it will turn out that the two of them can duke it out and we will go with whoever survives. I don't know.

**Chairman Flemming.** Commissioner-Designate Berry?

**Commissioner-Designate Berry.** I have one quick question.

Do you think, Mr. Mace, that before HUD spends some more of its money in funding another study that we might clarify and get some agreement on the notion that there will be some general standard that agencies will use rather than funding another study and then finding out that they still don't have to use the same one? Do you think that would be helpful for us to recommend?

**Mr. Mace.** I absolutely agree that there needs to be something that says there will be one and that there will be no further argument about it.

One other thing I did want to add to that is that, while it is true that authority for standards making was appropriately given to different agencies in construction issues for other reasons (different types of facilities and so forth), this is an issue that cuts across that. It affects people and it is designed for people, and why, can you tell me, should a toilet in one agency's facilities be different than a toilet in another one? So I think that bursts the argument that there should be different standards-making authority for accessiblity for disabled people.

**Vice Chairman Horn.** I think I ought to say, if my colleague is picking that up from my comment, you misinterpreted my comment. I did not suggest HUD fund another standards study. What I suggested HUD do is get a matrix comparison of your ANSI study plus the various governmental studies and see if we can't find out where the differences are and how then they could be resolved.

Now, personally I think the executive branch ought to be doing things like that within the executive branch. But if the only way you can get it done is to have one lead agency do it, that is what the suggestion was.

MR. MACE. I might suggest that the matrix study that would be proposed look at the research that was used for developing the specifics of each of the standards that is proposed. ANSI has a rather extensive research agenda for developing those. When those things are changed, it really is significant to look at what was done in order to make that decision to change it and whether consumer groups were consulted in making those changes.

MS. WALTERS. Could I interject something here since everyone seems to be focusing on the one standard, one focal point issue. There is a piece of legislation, S. 2080, the Public Buildings Act of 1979, which contains new language which would vest the Architectural Transportation Barriers Compliance Board as the focal point for the development of a single standard, or at least to the extent that the standard-setting agencies would have to have their approval before promulgating a standard, and that would clearly put the monkey on one agency's back.

CHAIRMAN FLEMMING. Is that pending?

MS. WALTERS. Pending. There are other activities taking place that are parallel to that, but I can't discuss the contents of the draft reports.

CHAIRMAN FLEMMING. Well, may I express to each member of the panel our deep appreciation for contributing in this way to obviously a complex problem. It has been very, very helpful and we are very grateful to you.

[Applause.]

CHAIRMAN FLEMMING. I will ask the members of the next panel to take their places very quickly.

## Transportation and the Handicapped

CHAIRMAN FLEMMING. Transportation and the Handicapped. The first presentation will be made by Mr. Dennis M. Cannon who is the founder of Synergy Consulting Services of Northbridge, California. He is a nationally known consultant on transportation matters affecting handicapped individuals. He founded Synergy Consulting Services, which provides a broad range of consulting services, including rehabilitation programs, awareness training programs, and planning methodologies to implement the country's first fully accessible all-bus transit system.

Mr. Cannon is active in many national, State, and local advocacy organizations for the handicapped. He will summarize his paper on transportation barriers and the handicapped, which is entitled, "A Funny Thing Happened on the Way to the Bus Stop."

Mr. Cannon, we are delighted to have you with us.

# A FUNNY THING HAPPENED ON THE WAY TO THE BUS STOP: TRANSPORTATION AND THE HANDICAPPED

by Dennis M. Cannon*

In 1954, with the landmark Supreme Court decision, *Brown v. Board of Education,* many people assumed that full integration of public education was just around the corner. Similarly, in 1970, when section 16 was added to the Urban Mass Transportation Act of 1964, many disabled individuals believed that public transportation (which their taxes had helped pay for) would finally be available to them. Again, in 1977 when Secretary Joseph Califano signed the HEW 504 regulation, disabled people hailed the event as their emancipation and expected doors to open and curbs to fall virtually overnight. Obviously, none of these events has occurred.

Barriers to the participation of black people in society are primarily institutional, educational, and economic. Barriers to the participation of disabled people include all these, plus the additional barriers presented by the physical environment. Because physical barriers appear to be a "natural" part of the environment (rather than existing because of overt oppression) and because removing them is perceived as costly, opponents have tended to focus on the "low cost-effectiveness" of barrier removal as the excuse for maintaining the institutional, economic, and attitudinal barriers to the participation of disabled people in the mainstream of American society.

In transportation, discrimination against disabled people has two aspects: first, the presence of physical barriers, such as steps on buses and lack of elevators in subways; and second, in those cases where some service is available to disabled individuals, the provision of a *much lower level of service* than that provided to the general public. (The question of "separate but equal" is not yet relevant, since no separate service provided so far has been even remotely equal.) The lack of usable public transportation like all forms of oppression and discrimination always do, has had a profound effect on the lives of disabled people. It has, in fact, affected every aspect of our lives, including our ability to receive an adequate education, seek and hold a meaningful job, to participate in the fundamental process of a democratic society, to vote in an election, and indications are that this lack of mobility has taken a heavy psychological toll.

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Citation of section 504 indeed marked the first court victories regarding inaccessible public transportation. However, section 504's success may also prove to be its downfall, as there is now a concerted effort from many sides to weaken or even overturn this important piece of legislation.

section 504 was the catalyst which sparked the Department of Transportation to move from a weak planning regulation that was not quantifiable, to a strong one requiring transit agencies to provide meaningful service to disabled people. For all its other weaknesses, the DOT regulation does overcome many of the inadequacies of the "local option" system it replaced by establishing easily-monitored national guidelines. Of course, the proponents of local option are not happy to lose their option of substituting a meaningless, symbolic feature such as door-to-door service, for the provision of a level of service to meet the real transit needs of disabled people. Again, the specter of "exorbitant" costs has been raised to defeat the regulation, and an impressive battery of highly sophisticated, technical, and easily misunderstood information has been assembled against it. It is doubtful that disabled citizens can muster the resources needed to meet this onslaught.

The principal force in this fight against the participation of disabled people in society is the powerful, multibillion dollar transit industry represented by the American Public Transit Association (APTA), a lobby group funded primarily by dues from its members. For the most part APTA's members are public transit agencies across the country; well over 60 percent of the funds used to pay their membership dues comes from public monies—taxes. Some of these taxes are collected from disabled taxpayers. Thus APTA is a publicly-funded body with no public accountability that consistently lobbies for laws that will allow them to discriminate against people solely on the basis of handicap.

## *The Legal Mandate*

Very few factors are as important to participation in society as is the ability to move about the environment. Even with enormous advances in telecommunications it is still absolutely vital for individuals to travel. This need affects all aspects of life, and, except in very rare instances, it is vital to securing a quality education, gaining meaningful employment, and participating in the social and cultural aspects of everyday living.

The basis of the right to travel cannot be found in any specific statute. In constitutional law it has been viewed as stemming from the privileges and immunities clause, the commerce clause, the 1st amendment freedom of speech and association clause, and the due process clauses of the 5th and 14th amendments. In fact, as the authors of the *Equal Access to Public Transportation: the Disabled and the Elderly* report, "The judicial development of the right to travel thus reveals that sources for the various aspects of the right are to be found scattered throughout the Constitution and that the right is considered to be such an ordinary incident of life in a free society that it emanates from the Constitution as a whole" *(Equal Access,* p. 51).

Securing the right to travel, however, means much more than simply allowing people to move about the environment. Governmental entities have come to recognize that travel is such an important aspect of life that they have an obligation to meet citizens' basic needs, especially those who cannot afford to own or operate private automobiles. This obligation has been reflected in an increasing governmental role in the provision of public transportation services throughout the country. In 1964, by passing the Urban Mass Transportation Assistance Act, Congress created within the Department of Transportation (DOT) the Urban Mass Transportation Administration (UMTA), an agency charged with administering what has become a multibillion dollar program to assist the Nation's cities to establish and operate effective public transportation systems.

In 1968, with the passage of the Architectural Barriers Act, P.L. 90–480, Congress established the principle that fixed facilities, such as buildings, constructed or leased by the Federal Government must be accessible to disabled people. While the act did not specifically refer to fixed-guideway transit systems, court decisions subsequently extended it to cover the Washington Metropolitan Area Transit Authority subway in Washington, D.C. In 1970, when it amended the UMT Act by inserting section 16(a), Congress took note of the deficiencies of public transit systems in meeting the needs of handicapped individuals. This section states that it is "the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that *special efforts* shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured. . ." (Emphasis added.) In proposing this amendment the author, Representative Mario Biaggi, took note of the provisions of PL

90–480 when he said that ". . .[section 16] would extend this access policy to mass transportation systems that are federally-supported so that such barriers to travel can be removed at the program's inception. . ." (116 Cong. Rec. 34180, quoted in *Equal Access).*

Unfortunately, section 16 had very little effect on the provision of meaningful service to disabled people and, in fact, until regulations were adopted 6 years later, UMTA and the transit industry (primarily APTA), continued to debate the meaning of "special efforts" and to what class of disabled individuals the law referred. Even though section 16(d) defines handicapped as any individual who by reason of illness, injury, age, is unable to effectively utilize mass transit facilities, UMTA attempted to argue that the law really only covered "ambulatory" and "semiambulatory" people, that is, those who could *presently* use public transit but with some difficulty. This category did not include, in UMTA's view, anyone who used a wheelchair. It was apparently assumed that such individuals would be "cared for" by social service agencies who would be assisted in purchasing accessible vehicles through provisions of section 16(b)(2) of the act.

In 1973, in passing legislation to make money from the highway trust fund available for mass transit projects, Congress sought to adopt a provision similar to section 16(a) but with stricter language to clarify its intent. Thus, section 165(b) of P.L. 93–87 of the Federal Aid to Highways Act (FAH) of 1973, states that projects receiving Federal funds under these provisions ". . . *Shall be* planned and designed so that mass transportation facilities and services *can effectively be utilized* by elderly and handicapped persons. . . ." (emphasis added), rather than the earlier language which stated only that *special effort* should be made to assure that *some* service that handicapped people could utilize would be *available.* Surprisingly (or perhaps not surprisingly at all), UMTA proceeded to argue in a number of court cases that, in spite of *Congressional Record* evidence to the contrary, rather than being an attempt by Congress to clarify its intent, the change in language proved that Congress intended something *different* in section 165(b) of P.L. 93–87 than it had in 16(a) of the UMT Act of 1964.

In 1975, noting the lack of progress by UMTA in implementing meaningful service to handicapped people, Congress adopted section 315 of the Department of Transportation Appropriations Act, P.L. 93–391, which stated that "none of the funds provided under this Act shall be available for the purchase of passenger rail or subway cars. . .motor buses or. . .construction of related facilities unless such cars, buses and facilities are designed to meet the mass transportation needs of the elderly and the handicapped" *(Equal Access,* p. 21). Unfortunately, this section referred only to the 1975 appropriation, virtually all of which was for systems already completed or in the final construction phases, so it had little or no real effect.

At the same time that section 165(b) was being proposed for P.L. 93-87, the Rehabilitation Act of 1973 (P.L. 93-112) was passed. section 504 of this act is generally regarded as the "civil rights" act for handicapped people. section 504 contains a broad prohibition against discrimination in projects receiving Federal financial assistance, and it was the basis for the first real victories in the courts in achieving meaningful public transportation for disabled people. Coupled with Executive Order 11914, it led to the promulgation of the DOT's regulation implementing nondiscrimination in federally funded transportation projects. Ironically, during this period, in which UMTA and DOT were seeking to prevent the implementation of congressional mandates for nondiscrimination, DOT was headed by William Coleman, one of the chief attorneys on behalf of the plaintiffs before the Supreme Court in *Brown v. Board of Education.*

## The Regulatory Background

On April 30, 1976, UMTA published regulations clarifying the meaning of "special efforts" as specified in section 16(a) of the UMT Act of 1964. This regulation did not include either a general requirement for accessibility or the specification of any particular service level in specialized services. Its focus was on "planning" to provide some level of service. The first annual element of the transportation improvement program (TIP) filed by transit agencies after September 30, 1976, was to include "projects or project elements" designed to meet the transportation needs of a "significant portion" of the handicapped population. The first annual element of the TIP filed after September 30, 1977, was then to show "significant progress" in the implementation of those planned projects.

UMTA did provide some guidance as to what constituted acceptable projects, but these guidelines were not intended to provide minimum standards or requirements for the provision of service. The three examples were: (1) the provision of any service which would expend a dollar amount equal to 5 percent of the section 5 allocation for the urban area; (2) the purchase of only wheelchair-accessible, new, fixed-route buses until 50 percent of the fleet was accessible or the provision of an alternative service with comparable service levels; or (3) the provision of a transit system of any design which would ensure each handicapped individual in the area 10 round trips per week.

Though never intended as minimal requirements or standards, many transit agencies adopted one of these examples in substantially the form it appears in the regulation. One of the most popular was to use the so-called "5 percent test," which consisted of adding up the cost incurred in providing any kind of transit service that could be attributed in any way to service for disabled individuals. Since many specialized services are extremely expensive, the 5 percent test could be met fairly easily, even though the level of service was inadequate to provide transportation to more than a handful of people.

Other transit agencies were more creative in their interpretation. In briefs filed in *Michigan Paralyzed Veterans of America v. Coleman*, the defendant, Southeastern Michigan Transportation Authority, argued to include the cost of providing bus shelters, since they were "wheelchair accessible," even though the agency did not provide any accessible fixed-route service for which these shelters would be of benefit. Similarly, the New York Metropolitan Transit Authority had sought for years to implement downtown minibus shuttle service; by equipping these vehicles with lifts, MTA sought to include the total capital and operating costs for this service as fulfilling the requirements of the regulation, even though it admitted that only a minute portion of the cost could be attributed to providing any kind of service to disabled individuals.

A few transit agencies sought to comply with the regulation by purchasing accessible buses, but the vast majority chose to use the second clause of example number two, which allowed for the substitution of a specialized service with "comparable" service levels. Unfortunately, comparability was never defined, and transit agencies were able to qualify with services that had highly discriminatory restrictions. Many such systems allowed trips for only certain purposes, or operated during restricted hours or for only small portions of the total service area, or charged fares anywhere from 2 to 10 times higher than the fares charged able-bodied people using the primary transit service.

A great deal of discretion in determining "comparability" was given to the metropolitan planning organization (MPO) and the regional UMTA office. Thus, Orange County (California) Transit District (OCTD) qualified for Federal funds simply by submitting a one-page letter saying OCTD provides an alternative service with comparable service levels, in spite of the fact that the service operated in only a small portion of the county, required a 24-hour advance notification, had a long waiting list for service, and arbitrarily prioritized trip purposes, effectively prohibiting many disabled individuals from traveling *(Bagstad v. OCTD,* Points and Authorities).

Even the relatively weak April 30, 1976, planning requirements have not been uniformly enforced. The reason, in part, stems from the granting of authority to the regional UMTA offices, each of which has made a different interpretation. For example, AC Transit in the San

Francisco bay area had not, prior to court action, provided any accessible service nor had it developed plans for providing any. Their "projects or project elements" designed to provide service consisted of a "needs study," even though guidelines issued by UMTA in Washington had indicated that such studies were not eligible projects. Similarly, even though the regulation required including projects in the TIP after September 30, 1976, and showing substantial progress in implementing them by September 30, 1977, the Chicago Transit Authority, as of May 1980, had engaged in only the most cursory planning efforts and had implemented no service whatsoever. Massachusetts Bay Transit Authority has been somewhat less blatant. It has proposed projects at the appropriate level of funding in each TIP as required. However, after approval of each grant, it has subsequently amended the TIP to reduce the level of funding (Hale and Door). The actions of both Chicago and Boston should have resulted in a termination of their Federal funds if the regulation was to have any meaning at all. Clearly, UMTA had no intention of enforcing even such weak regulations. In such an atmosphere of blatant disregard of Congress, then, it is not surprising that UMTA balked at the HEW guidelines and that the transit community recoiled in horror when they discovered they could not so easily circumvent the new regulation.

While it took the Department of Transportation almost 6 years to issue regulations implementing section 16 of the UMT Act, it took HEW 4 years to issue regulations implementing section 504 of the Rehabilitation Act of 1973. HEW was further charged by Executive Order 11914 with coordinating the issuance of regulations by all other Federal departments, including DOT, but not until January 1978 did HEW finally publish guidelines for such regulations.

These guidelines seriously constrained DOT's discretion to permit "local option," a concept that had permitted transit agencies to provide discriminatory tokenism as a substitute for meeting the real transit needs of handicapped Americans. For the first time, DOT was permitted to defer accessibility *only if* transit agencies provided a level of service generally equivalent to that provided the general public. Federal agencies were given 90 days to publish draft regulations, with final regulations due 135 days later, and DOT adopted final regulations in May 1979, 9 years after Representative Biaggi proposed that public transportation be designed to be effectively utilized by elderly and handicapped people. Almost immediately APTA (using public money) filed suit to overturn those regulations.

The DOT 504 regulation does not, however, totally settle the issue of discrimination. While subpart A generally addressed the concept of ensuringT that service to disabled people must provide the same opportunities to participate in society, these provisions are preempted by subpart E, wherever the two parts conflict. Subpart E does require general accessibility and even incorporates service-level requirements for "interim accessible transportation," but establishes a funding limit which, at national average operating costs, would allow each of the Nation's wheelchair users to take 8.5 trips per year. Clearly, DOT does not yet take seriously the issue of service standards for nondiscrimination.

## The Battle in Court

The slowness with which the Department of Transportation implemented section 16(a) of the UMT Act of 1964, as amended, and section 504 of the Rehabilitation Act of 1973 has had a profound effect on the legal battles fought in the courts. In some cases, the court deferred ruling in favor of the plaintiff on the contention by UMTA that such regulations were "imminent" when, in fact, they were not. In other cases, the courts ruled that the plaintiffs had not yet exhausted administrative remedies under existing or recently issued regulations and therefore were not entitled to redress in the courts. In addition, in virtually every case the defendant argued that technology was not "available," at least in the sense that full-size accessible buses had never been manufactured in sufficient quantities and/or had not been proven to be reliable or maintainable in regular fixed-route service. Imbedded in this debate was the implication that buses are purchased in a similar manner as the private automobile and selection is made from models on "the showroom floor." In reality, buses are manufactured to transit agencies' specifications, and neither the transit agencies nor UMTA had requested bids on such accessible buses.

One of the first cases decided both on the requirements of sections 16 and 504 was *Snowden v. Birmingham-Jefferson County Transit Authority.* This case may prove to be the *Plessey v. Ferguson* of the disability transportation rights movement. Here, the court held that since persons who use wheelchairs were "permitted" to ride county buses even though they were not physically able to do so independently, there was no overt discrimination involved. Since accessible buses were not yet "available," it would be unfair, in the court's opinion, to deny the transit agency the right to purchase vehicles until such time as an accessible bus was developed. This ruling, that section 16 did not require the funding of only accessible buses, has been cited in all subsequent cases. Pending a rehearing of this case, this decision is likely to perpetuate discrimination in public transportation.

In *Vanko v. Finley,* the court found that section 504 did not require that the transportation agency make all its buses accessible to persons in wheelchairs nor was there a requirement for "immediate" service comparability. The district court held that the section's antidiscrimination intent can be satisfied by "the same substantial good faith progress in both the planning and implementation of transit programs for the mobility-handicapped that is sufficient for the purposes of the Urban Mass Transportation Act of 1964 and the regulations thereunder. Vague plans for the indefinite future and second rate transit for the mobility-handicapped will not satisfy the mandate for these federal laws. . . ." (CBO, p. 89). However, the transit service in question (which operates in Cleveland, Ohio and will be discussed later) clearly currently offers "second rate transit for the mobility-handicapped."

In *Bartels v. Biernat*, in Milwaukee, Wisconsin, the district court held that section 504 was violated by operating a mass transit system which was effectively inaccessible to disabled persons, while at the same time attempting to purchase new inaccessible buses. In this case, the court did not require Milwaukee County Transit Authority to purchase accessible buses, but rather to provide some reasonably comparable service *or* to purchase buses with lifts. When Milwaukee County Transit was unable to design a specialized service which could be deemed comparable, it agreed to order lift-equipped buses. Since that time, Milwaukee County Transit has instituted a "user-side subsidy" program which is still highly discriminatory. It does, however, provide an example of the ability of such specialized services to provide *supplemental* transportation when keyed to an accessible fixed-route system.

In *Lloyd v. Regional Transportation Authority*, the Seventh Circuit Court of Appeals held for the first time in a transit-related case that section 504 established an implied private cause of action. The court also held that section 504 conferred "affirmative rights and that a private right of action could be implied to vindicate these rights" (CBO, p. 87). In this case, the regional transit authority was ordered to fashion relief involving the planning and implementation of some level of service that was roughly comparable to the service provided the general public. Even though this case was decided in 1977, the Chicago Regional Transportation Authority has yet to implement transportation for handicapped people.

In *Michigan Paralyzed Veterans of America v. Coleman*, the court found that plaintiffs could bring the action based on *Lloyd* but that factual issues concerning whether the buses were available with a wheelchair option caused the court to deny the motion for summary judgment. Here again, the issue was the "availability" of accessible equipment. This case was decided in 1977, *after* the Southern California Rapid Transit District (Los Angeles) in September of 1976 received bids from all three bus manufacturers to produce a lift-equipped vehicle, clear proof that such a vehicle was "available" in the traditional sense. The courts were apparently using a different definition of availability for lifts than for other bus components.

In *Atlantis Community v. Adams*, plaintiffs sought to require the Denver (Colorado) Regional Transportation District to install lifts on the "retrofitable" buses they had ordered. The defendants in this case argued that lifts had not yet been proven in general transit service and that they were meeting their obligations under the Federal regulations by providing a specialized door-to-door service. Unfortunately, this service is one of the most discriminatory in the Nation and provides transportation to only 170 individuals out of a population which Denver RTD itself estimates to be 45,000. The court found that the Rehabilitation Act did not specify the duties of Federal officials to enable the judge to give these officials directions (CBO, p. 90).

Finally, in *Washington Urban League v. Washington Metropolitan Area Transit Authority*, the court extended the Architectural Barriers Act, P.L. 90–480, to cover the fixed-facilities and stations of the Washington, D.C., Metro. Since P.L. 90–480 requires that facilities that are substantially modified be made accessible, some requirements of the DOT regulation are actually unnecessary in relation to existing fixed-route transit systems. Recently, the Architectural and Transportation Barriers Compliance Board, under the authority of P.L. 90–480, has cited the Chicago Regional Transit Authority for its failure to provide access to the recently renovated subway stations located under the State Street mall. This action is expected to have far-reaching consequences for the remodeling of existing transit stations.

Although *Southeastern Community College v. Davis* did not relate to transportation, it did question the duties imposed by section 504 and the authority of HEW to enforce the regulations that it had issued. The contention that HEW may have exceeded its authority was extended, in *APTA v. Neil Goldschmidt*, to question the guidelines issued pursuant to Executive Order 11914. To date, the judge has refused to consider many of the aspects of this case, preferring instead to defer to Congress, which is expected to debate these issues in the near future. As a result, APTA has made a concerted attempt to paint services created under local option in the best light and to downgrade (and perhaps even to sabotage) services provided under the 504 regulation. APTA is attempting through legislation, then, to circumvent nondiscrimination requirements and replace them with legislation that would grant local transportation agencies considerable discretion in the planning of services (including the discretion to do nothing).

### Transbus

Part of the original draft DOT 504 regulation was predicated upon the availability of Transbus by September 30, 1979. The failure of this vehicle to materialize played a significant role in DOT's requiring that all new buses purchased after July 2, 1979, be equipped with lifts. The reasons for the demise of Transbus are complex, but in the atmosphere of overt opposition of the transit industry, aided and abetted by previous DOT administrations, it is not surprising.

Contrary to popular belief, Transbus never was a bus designed for elderly and handicapped people. It was, instead, a bus designed for *all* people, which, almost accidentally, included elderly and handicapped people. The importance of this point has been lost in the continuing debate because in the campaign to sabotage the project it was more advantageous for the industry to make it appear that Transbus was nothing more than a "symbolic" factor in the provision of accessible transit service.

The Transbus project actually began in 1968 when the National Academy of Engineering (NAE) undertook a study to determine how nonrail transit vehicles might be improved to make them more attractive to a larger percentage of the population. Before this time, buses had been designed to meet the requirements of manufacturers and transit maintenance departments, not passengers. The so-called "new look" bus introduced in 1948 by General Motors was not built to human scale; its doors were too narrow, its steps were too high, and it did not incorporate sound human-engineering principles. At the beginning of the Transbus project, the transit bus industry was dominated by General Motors and its subsidiaries, which had in excess of 60 percent of the market. In addition, even its competitors used Allison transmissions and Detroit Diesel engines, both of which are manufactured by subsidiaries of General Motors. Initially, General Motors' competitors viewed the development of the Transbus as a method for reintroducing competition into the bus market and providing them an opportunity to gain a more equitable share.

The NAE report, which suggested changes in the design of buses to make them usable by everybody, including small children, pregnant women, people carrying packages, and, almost as an afterthought, disabled individuals. culminated in the Transbus project in which the Federal Government spent $27 million to have the three manufacturers of full-size transit coaches design, build, and test three Transbus prototypes each.

The key features of the Transbus were its low floor, its single low step, and a wider door. According to both human factors analyses and actual experience during the testing, these features contributed to greater stability of the vehicle and, more important, greater ease with which passengers entered and exited, plus the ability to use a ramp for boarding wheelchairs at curb-side. Under such conditions, the ramp was far superior to a lift because it was faster to operate, needed to be operated only once to board everybody, including people in wheelchairs, and was easier to build and maintain than a lift. Since the majority of disabled individuals do not actually use wheelchairs, the low floor and single low step were the most significant accessibility features incorporated in this vehicle. General Motors itself had earlier investigated these features and built a prototype bus called RTS, but later claimed that in discussions with transit operators it had determined there was no market for such a vehicle. (Significantly, General Motors never discussed these features with *passengers.)*

In these earlier phases, transit agencies had expressed concern over the ground clearance, especially on hilly streets. Early industry fears were that the vehicle would not only scrape its undercarriage, but its low extended front end would "snowplow." To resolve some of these early difficulties, UMTA used the APTA bus technology committee extensively in reviewing early Transbus specifications. According to committee meeting minutes, virtually all these problems were eliminated in the specifications and, in fact, the prototype Transbus had better ground clearance than the General Motors' "new look" bus, which was used for comparison purposes (Transbus Report - Booz-Allen).

Then in 1975 events took a strange twist. In spring of that year, APTA officials began reraising the same questions that the bus technology committee felt that it had already solved. In fact, members of that committee were surprised that the APTA official announcement substantially ignored all its own committee's findings (Frank Barnes). At approximately the same time, General Motors announced that it was introducing a new advanced design bus, called the RTS-II, which incorporated some of the cosmetic features of the Transbus but not the low floor or wide door, and which offered a lift option in the rear door only. With the introduction of the RTS-II, APTA's opposition to Transbus solidified, leaving the two other bus manufacturers confused as to whether there would in fact be a Transbus specification forthcoming after all. General Motors had reportedly spent over $80 million retooling for the RTS-II, a surprising "gamble" on its part if indeed a Transbus were forthcoming. UMTA continued to announce publicly that Transbus specifications were "imminent," so the two other manufacturers did not develop advanced design buses to compete with General Motors.

About this time (spring 1976) the Southern California Rapid Transit District (Los Angeles) was negotiating with UMTA and Rohr/Flxible to produce 200 low-floor buses for that agency's fleet. In spite of original UMTA concurrence on the specifications, new conditions were attached that made it economically infeasible for Flxible to produce those buses. It decided instead to design an advanced design bus to compete with General Motors and did not bid on the low-floor

SCRTD bus. In July 1976, the then UMTA administrator, Robert Patricelli, announced, to no one's real surprise, the termination of the Transbus project and the substitution of a general specification for future buses that was curiously similar to the RTS-II. This action sparked a lawsuit by the Public Interest Law Center of Philadelphia to force the Department to proceed with its earlier plans.

With the change in administrations, the new Secretary of Transportation, Brock Adams, announced his intention to reconsider the Transbus issue, and in May 1977 he reaffirmed the project and called for Transbus to be the official DOT vehicle ordered after September 30, 1979.

Almost immediately, H.R. 3155 was sponsored by General Motors and supported by APTA to "reexamine" the Transbus decision. Component manufacturers who had put their devices on the shelf with the earlier cancellation of the project by Patricelli, now dusted them off with Adams' announcement, then reshelved them when H.R. 3155 was introduced.

General Motors lobbied very heavily for this bill, attempting to prove that the RTS-II, in fact, satisfied accessibility requirements. At a General Motors-sponsored bus demonstration in Washington, D.C., however, members of Congress, the press, and the disabled community persuaded GM to test its bus at a real bus stop. General Motors was seriously embarrassed when it became evident that a vehicle with a rear-door lift could not be used at any of the stops around the Capitol. This fiasco prompted General Motors and APTA to withdraw support of H.R. 3155, but the development time lost by component manufacturers due to the "on-again, off-again" status of the project made it virtually impossible for them to meet the December 30 deadline. As a result, when specifications were finally adopted for the vehicle, no bids were received.

In part, this was due to the earlier political maneuvering, but it was also due to efforts by GM to persuade UMTA to write a Transbus specification that only GM could build, and by Flxible to write a specification that only Flxible could build, culminating in a conglomeration that neither wanted to build.

Flxible had originally seen the Transbus project as a possibility to compete in the bus market and had been very supportive of it. However, when its advanced design bus, the 870, proved to be significantly cheaper than the RTS-II and it found itself winning nearly 80 percent of the bids, Flxible's support of Transbus evaporated. GM's opposition to Transbus may also be economically based. According to a report issued by the Stanford Research Institute (SRI), General Motors may fear that a more usable bus would cut into its profits: Less than 5 percent of GM's corporate profits comes from its

Truck and Coach division; 95 percent comes from its automobiles. SRI suggests that General Motors knows that a more usable bus would increase ridership of public transit, and GM wants to sell cars. This situation is curiously similar to one advanced to explain the disappearance of Los Angeles' Pacific Electric transit system.

The demise of the Transbus project represents another area in which the possibility of misuse of public funds by APTA should be investigated. Even some of its own public transit operator members have criticized the organization for seemingly being more concerned with promoting the financial interests of certain equipment manufacturers than in fostering good public transportation (SCRTD resolution).

## Local Option Does Not Work

One suggestion for dealing with some of the inadequacies of the current DOT 504 regulation has been the proposal that transit systems be allowed to continue to exercise "local option" in designing such transit systems. The original idea behind "local option" was to provide a transit agency considerable latitude in the planning of transit services to meet the needs of a particular service area, taking into account geographic, institutional, and climatological factors. Under "local option," individual urban areas would assess their needs and plan transit systems specifically to meet those needs.

There are definite merits to this approach and it was the primary focus of the "special efforts" regulations, but, unfortunately, the idea has not worked in the past and is unlikely to work in the future. For example, "local option" spawned the Denver, Colorado, transit system mentioned previously that, in spite of high monthly ridership figures, was in 1976 providing service to only 165 individuals and had a waiting list of over 400. And this was at a time when the Denver Regional Transit District itself estimated that approximately 45,000 individuals needed the service. Slightly more than 1 year later, the same service had increased its ridership from 3,000 to 4,000 rides per month, but the population served had increased only by 5, to 170, and the waiting list had risen to over 700 *(Atlantis v. Adams.)*

This service required a 3-month advance registration and permitted only regularly scheduled trips, such as to work, school, or rehabilitation centers. Such a system is obviously not suitable for *seeking* employment and is, in fact, usable only by those who have already secured transportation to and from work or school in order to establish the schedule required to apply for the bus service. In addition, its low capacity denied service to most of the people who really needed a door-to-door service.

One of the earliest attempts at fulfilling the April 30, 1976, regulation was performed by Long Beach (California) Public Transit Corporation. This service consists of a series of vans with lifts purchased by the transit agency and leased to a local cab company which operates them. There are now 13 vans in the system covering a service area of approximately 98 square miles, 1 van for every 7.5 square miles. Currently, 1,500 people have been certified eligible to use the system, and approximately 150 people are on a waiting list. Under normal conditions an application for service takes approximately 3 months before the disabled individual is actually allowed to use the system.

Originally, the service was intended to provide a 20–30 minute response time, but the low number of vehicles and the high usage have already strained the capacity to the point that the system has never moved beyond requiring 24-hours' advance notice. After 5 years of operating experience, the cab company estimates that it cannot reach its 30-minute response time without at least doubling its fleet.

### "Special Efforts" Services Are Discriminatory

The goal of section 504 of the Rehabilitation Act of 1973 was to ensure that services provided to the general public with government funds should also be available to people with disabilities. The key word is "service" not necessarily "facilities." In many situations, services provided to the general public can be provided to handicapped people without making all, or even any, facilities accessible to them. Generally, this concept has been applied in educational situations where a course of study may be provided in an accessible location, without the need for the entire college campus to be modified.

In transit services the concept has been used to promote "local option," with the transit industry contending that "superior" *service* can be provided to handicapped people without making the existing facilities (the transit system itself) accessible. Unfortunately, the claim of specialized services' superiority is based solely on the curb-to-curb feature. There is no question that this feature is desirable, nor is there any question that for some disabled individuals it is essential in order for them to utilize a public transit system.

The cost, however, of supplying such services has proven to be so high that the industry has been forced to place restrictions on the demand. For example, virtually every service requires that disabled people register with the agency in advance of being served, and in most cases certification by a physician or social service agency is required. Such certification or registration restrictions mean that the service is not available to visitors or people who do not live permanently in the service area, even though they may be there for a significant period of time (e.g., college students).

Another restriction placed on these services is high fares. Some specialized services, such as Delaware Agency for Specialized Transit (DAST) have charged their disabled passengers fares 10 to 20 times higher than those charged able-bodied people traveling the same distance. This is frequently justified by the contention that a curb-to-curb service is a "premium" service, in the sense that it is better than that being provided to the general public, but the concept of "premium service" has been traditionally used to reflect the superiority of one *alternative* over another, for example, commuter park-and-ride services as opposed to local bus service. By contrast, the specialized services for disabled individuals are usually the *only* means of transportation available to them; they have no alternative. In this case, the door-to-door service cannot genuinely be classified as a premium service.

A loophole in the half-fare provision of the UMTA Act permits the industry to charge these higher fares: The law currently states that handicapped people must be charged half the fare normally charged the general public during off-peak hours (section 5(m)), but by restricting the specialized services to disabled people only, the transit operator can circumvent the half-fare provisions as there is no "general public" fare to halve.

The Milwaukee user-side subsidy program, which utilizes the services of three taxi companies and two lift-equipped van services, is an example of what happens when disabled passengers do have an alternative to the "premium" specialized service with its premium fare. According to *Passenger Transport,* passengers made their own arrangements for pickup and delivery, paid the driver $1, and signed a voucher. The provider then charged the remainder of the cost to the transit district. Of the two van services, one required 24 hours' advance notice and the other 48 hours. In August 1978 an estimated 2,300 people were eligible to use the service ("Milwaukee Begins Program" 1978).

The transit agency allocated $193,000 for each of 2 years' operation of this system, and, according to information supplied by the Milwaukee County Transit Planning Department, the average subsidy was $6.77 per one-way trip. Simple arithmetic shows that this would allow each registraint 12 *one-way* or 6 round trips *per year,* enough to go shopping once every other month or to work 6 days. Since that time, Milwaukee County Transit has been forced to set a limit of $10 per round trip; passengers must pay any amount over that. Milwaukee now has some accessible fixed-route buses, and since the $10 limit was set, at least one wheelchair user who previously made long daily trips on the subsidy service now saves money by using it only to connect with a nearby fixed route.

Most specialized services created under "special efforts" have other restrictions as well. Some, such as the Denver system, are subscription services, which effectively limit trip purposes to those which are periodic and can be arranged in advance. Originally, the Denver service was specifically restricted to work, school, and rehabilitation center trips. Although it now claims to have no such restrictions, its subscription requirement effectively maintains the previous restrictions. Many others, such as Spokane, Washington, and San Diego, California, have trip priority designations, meaning that some individual decides whether one particular trip is as important as another. Usually, medical trips have high priority and a request for such a trip may very well force the cancellation of one previously scheduled if the nonmedical trip, in the opinion of the service provider, is "not as important." Other services, such as one reported at an APTA workshop in Houston, claim to have no waiting list and to be able to satisfy virtually all trip requests. However, in this particular case, the provider indicated there were only two telephone lines coming into the dispatch center and both lines were continually busy. Thus, an unknown number of individuals were refused service by virtue of having received a busy signal.

All these restrictions are examples of denying equal transit service to individuals solely on the basis of their handicap; obviously enough, if these individuals were not disabled, they could get the same services everybody else does. No able-bodied users of public transit are required to register with the transit agency before being allowed to board a bus or train; they need only present themselves at the proper place and time, with the proper fare, to be served. Able-bodied individuals visiting another city are permitted to use public transit there, but disabled travelers are denied that prerogative solely on the basis of their handicaps. Able-bodied residents of Norwalk, California, can travel to Los Angeles International Airport or to a large shopping mall just outside the city limits on either of two transit services, but disabled individuals, who can use only the city's dial-a-ride, are not permitted to do either because both are beyond the city limits.

## APTA Suit to Overturn DOT 504 Regulation

Some of the most glaring examples of discriminatory transit service are contained in the affidavits filed on behalf of the plaintiffs seeking to overturn the DOT 504 regulation in *APTA v. Neil Goldschmidt.* Harry Alexander, member of the board of trustees of the Greater Cleveland Regional Transit Authority (RTA), describes the Community Responsive Transit Program (CRT) designed under the April 30, 1976 "special efforts" regulations, as ". . .basically intra-neighborhood in scope with interneighborhood trips available for medical trips and similar purposes." The service area has been divided into 18 interneighborhood areas. CRT operates from 9 a.m. to 5 p.m. Monday through Friday and 8:30 a.m. to 3 p.m. Sundays; a user must reserve a trip 24 hours in advance. By contrast, service to the general public is available throughout the city 7 days a week, 24 hours a day on many lines.

The affidavit further states that "rides for medical appointments may be reserved an *extra* day ahead. To use CRT, riders must have either an *authorized* RTA senior citizen or handicapped pass." (Emphasis added.) As of July 1979, the system consisted of 23 lift-equipped vehicles and 41 nonlift-equipped vehicles.

RTA also operates "Extra-Lift," a subscription service for work, college, or vocational training trips. Extra-Lift operates only between the hours of 6:30 and 8:30 a.m. and 3 to 5:30 p.m. Pickup time deviations are not permitted, so a worker who would like to work late or go to work early cannot do so, and because it is a subscription service, a potential passenger must already have a regularly scheduled trip need and, accordingly, the service cannot be used to *seek* employment. During calendar year 1979 approximately $2.2 million was allocated for CRT "Extra-Lift" services, an amount far exceeding the expenditure required under the UMTA "special efforts" regulations, and CRT was still unable to provide a comparable level of service.

The affidavit of Louis W. Hill, chief executive officer of the Regional Transportation Authority of Illinois (RTA), serving Chicago and its suburbs, indicates that the RTA originally planned to purchase 65 small vehicles for the Chicago paratransit service. Due to lack of funding, the grant is now being amended to purchase 30 small lift-equipped vehicles, but even these 30 have not been purchased yet, and, except for 5 vehicles being operated under the auspices of the mayor's office for senior citizens and handicapped, no accessible transportation is currently offered in the Chicago area, in spite of the "special efforts"/"local option" regulations that have been in effect almost 4 years. The "local option" exercised in this case has been the option to provide no service whatsoever. (For an indepth discussion of these systems, see "Full Mobility: Counting the Cost of Various Options," Synergy Consulting Services, soon to be published by the American Coalition of Citizens with Disabilities.)

## *Nondiscrimination on the Basis of Handicap*

If the goal is to provide to disabled people the benefits of government programs equal to those provided to the general public, then the focus must be on the *benefits themselves* rather than on the *means* of providing them. For example, the benefits derived from a publicly supported university are a general education, an academic degree, and enhanced job opportunities. Providing these benefits to disabled individuals need not require all facilities of the university to be made accessible if, for example, by rescheduling classes in a single accessible building a disabled individual can obtain these same benefits at the same cost, in the same period of time, with the same choices, and with the same level of effort.

This principle applied to transportation implies that the provision of a separate specialized service would not, in and of itself, deny disabled individuals the benefits of the transit system. However, as yet no such equivalent specialized service has been created, and there is considerable evidence that the creation of such a service would be logistically and economically infeasible.

The concept of "local option" as presently formulated is not adequate to meet the letter of the law, let alone its spirit. All services provided under "local option" are highly discriminatory in the provision of service to disabled individuals. While the DOT 504 regulation might be faulted for its failure to cover all aspects of transportation for disabled individuals, it does address some of the most pressing issues and does partially incorporate the concept of "equivalent facilitation" but within an unrealistic funding limitation which will likely render it ineffective.

It is possible to meet the intent of nondiscrimination without prescribing the specific form that a transit system must take. Such a procedure would be a true "local option." Rather than requiring a specific system design, the nondiscrimination aspect would require the establishment of a principle of "equivalence," which would establish performance levels for operating a service of any design. Such a principle would simply state that whatever transit system is provided for disabled individuals, be it a specialized service, a fixed-route service, or a combination of the two, the benefits provided to the general public would also be provided to disabled individuals.

## Equivalent Facilitation

Equivalent facilitation is a concept used in California architectural barriers law to decide when a building may be excused from total accessibility. Thus, a facility need not be 100 percent barrier free if, in the portion which is usable by handicapped people, all services and amenities normally sought and used by the able-bodied public are available such that ". . . .equivalent facilitation is thereby assured. . ." (sec. 4451, chap. 7, div. 5 of Title 1 of the California

Government Code). This concept needs to be extended to public transit.

Certainly, the primary function of public mass transportation is to move people from point A to point B, but the issue is actually more complex than that. Just as a bicycle is not comparable to an automobile, some systems designed to serve handicapped passengers are not comparable to the service offered the general public, even though a door-to-door feature may be provided. Thus, the *test of equivalence* provides a checklist for evaluating the service planned for disabled people.

## Test of Equivalance

1. *Equivalent Service Range.* Contrary to many assumptions, disabled people are dispersed throughout the general population and their travel needs are not significantly different from the general population. Thus, service for disabled persons should extend throughout the general service area and operate during the same hours as the system used by the general public.
2. *Equivalent Transfer Frequency.* Handicapped passengers should not be required to transfer any more often than able-bodied passengers.
3. *Equivalent Fare.* Disabled passengers should be charged a fare no higher than that of the general public for trips of comparable length.
4. *Equivalent Travel Purpose.* Just as able-bodied people riding the primary system are not restricted by trip purpose, neither should handicapped people be. "Priority" systems that give the operating agency the authority to determine whether one person's trip is more "important" than another's are also discriminatory.
5. *Equivalent Trip Decision/Travel Time.*
    a) Trip Decision Time: In general, the user of public transit need decide to travel no longer in advance than the average headway plus travel time to the stop.
    b) Travel Time: Travel time varies according to the type of service (i.e., local or express). These two parameters are grouped, since they balance each other. For example, an able-bodied user of transit may have access to a bus line with 20-minute headways but which is a local service that takes an hour to make the trip. An alternative service for disabled people may require a 1-hour advance notification but travel "express" and complete the trip in 20 minutes. Taken together, trip decision time and travel time for the handicapped passenger should be equivalent to that of the able-bodied passenger.
6. *Equivalent Capacity.* Able-bodied users of public transit may occasionally be confronted with a full vehicle but never a closed

transit *system.* Many objections have been raised in the transit industry about accessible line-haul bus service with the question, "What good is an accessible bus if the handicapped person can't get to the bus stop?" An equally valid question, however, is, "What good is a door-to-door service when the handicapped person gets only as far as a waiting list?" In fact, the disabled person has *some,* however slight, control over the first situation (i.e., he or she may be able to get someone to help) but has *no* control over the latter. Actual numbers of people carried is important, of course, but so is *potential* ridership. Planning services with low saturation points does not solve the transit problems of handicapped people in the long run.

7. *Equivalent Availability.* Able-bodied users of public transit need only present themselves at the proper time and place with the appropriate fare to be served. Visitors to an area are allowed to use the system without permission. Services to disabled passengers that require advance registration and/or certification by a physician or social service agency exclude a large group of people they purport to serve. Of course, such transportation should never be restricted to members or clients of a particular organization or agency.

The principle of equivalent facilitation has been presented more than once to the American Public Transit Association, which has rejected it on each such occasion. It seems clear by such actions, in spite of its continued claim that curb-to-curb service is in fact "superior," that APTA has no interest in promoting equal service. Were curb-to-curb services truly superior, providing merely equal service would be no problem. One can only surmise that APTA knows full well that the services designed under "local option" could not possibly be judged as "separate but equal," let alone "separate but superior."

It is clear, then, that to provide elderly and handicapped people a transportation system which does not discriminate against them solely on the basis of handicap, a "test of equivalence" or some similar performance criteria must be adopted. Even when systems are designed under a "local option" concept based on equivalence, it is important that the "option" exercised be that of providing a particular service *level* to the disabled community, not an arbitrary or "theoretical" service *design* of the transit agency's.

## The Semibottom Line

This paper has not dealt with the issue of cost except to point out that the apparent low cost of specialized services is an illusion resulting from comparing "token" services, which deny handicapped people the benefits of transportation services that are available to the public, with the cost of fixed-route accessibility. In addition, the supposed cost of accessibility has been grossly overestimated by the transit industry.

For example, recent cost estimates for converting old fixed-rail systems included: the cost of retrofitting a line scheduled for demolition in 5 years; the cost of building a high platform at a station where a minor operational change would achieve the same result at *no cost* ; the cost of modifying the entire length of platforms when only a portion is required by regulation. Over 40 percent of the transit industry's estimate for operation of accessible buses is based on the assumption that there will be *so many* handicapped people using the service that it will seriously slow it down. This contention is asserted at the same time that the industry claims that *practically no* disabled riders can use the services. These and other issues, including the absurd claim by the Congressional Budget Office that an adequate accessible transportation system can be provided by 33 vehicles in *each State,* are analyzed in greater detail in "Full Mobility: Counting the Cost of Various Alternatives" (available soon from the American Coalition of Citizens with Disabilities, Inc.).

The fear generated by these incredible cost overestimates is being played upon by APTA in attempts to persuade Congress to exempt public transportation from section 504 and allow them to continue to provide discriminatory services. It seems that it is time for the General Accounting Office, or some similar body, to seriously investigate whether transit agencies using public money to support these efforts by APTA constitutes misuse of public funds. It is also time to investigate whether or not these same public funds are being used to promote the economic interests of profitmaking corporations.

One of the duties of the U.S. Commission on Civil Rights is to collect information on the ways in which disabled Americans are handicapped by the denial of their civil rights. It is clear that the discrimination against disabled people is of monumental magnitude, due primarily to the fears and stereotypes that able-bodied people hold. In reality, all barriers to the participation of handicapped Americans are attitudinal, since if there were no attitudinal barriers, we could sit down together and work out a simple engineering solution. Even when engineering solutions are available, there is still a tremendous effort to avoid dealing with disabled people and to attempt to push them back into the institutions where they can be quietly forgotten.

The International Year of Disabled Persons begins in 1981. Will this country, the most technologically advanced in the world, fail to allow its disabled citizens to participate in the mainstream of American life simply because we remind able-bodied people of their own mortality?

CHAIRMAN FLEMMING. Mr. Cannon, we are delighted to have you with us.

## STATEMENT OF DENNIS M. CANNON, PRESIDENT, SYNERGY CONSULTING SERVICES, NORTHRIDGE, CALIFORNIA

Mr. Cannon. Thank you.

I would like to point out one thing about my presence here: I got here today on public transit. One of the reasons why I like this city is because it does have accessible public transit. I was able the other day to ride accessible public transit buses and I used them to get where I wanted to go.

A particular example that applies to the problem I am here to discuss is that yesterday I called some people at the Department of Transportation (DOT) to try to set up a meeting. I got a confirmation that somebody would be available within about half an hour. I said, "Fine, thank you, I'll be there. Goodbye," went out on the street, caught a bus and arrived at the Department 15 minutes later, something I would not have been able to do in most cities in this country.

I would like to begin my presentation with a summary of my paper and then digress a little bit because there are some things that have happened in the last few days that are critical to this issue. In 1964 with the Supreme Court decision *Brown v. The Board of Education,* many people assumed that full integration of public education was just around the corner. Similarly, in 1970, when section 16 was added to the Urban Mass Transportation Assistance Act of 1964, many disabled people believed that accessible public transportation was just around the corner. Again in 1977, when Secretary Califano signed the HEW 504 regulations, disabled people hailed the event as their emancipation and expected doors to open and curbs to fall virtually overnight. Obviously, none of these events has occurred.

Barriers to the participation of black people in society are primarily institutional, educational, and economic. Barriers to the participation of disabled people in society include all of these, plus the additional barriers presented by the physical environment.

Because physical barriers appear to be a "natural" part of the environment rather than existing because of overt oppression, and because removing them is perceived as costly, opponents have tended to focus on the "low cost effectiveness" of barrier removal as the excuse for maintaining the institutional, economic, and attitudinal barriers.

I would like to amplify on something that Mr. Mace said earlier. He contended that the major barrier was really an attitudinal barrier. I will go one step further: I maintain that the *only* barrier is an attitudinal barrier. If there were no attitudinal barriers, when we perceive a problem such as transportation, the two parties would sit down and work out a simple engineering solution. The fact that that does not occur even when there is, indeed, a simple engineering solution available is due to the attitudinal barrier, not to the physical barrier.

Transportation discrimination against disabled people has two aspects: first, the presence of physical barriers such as steps on buses and lack of elevators in subways; and, second, in those cases where some service is available to disabled individuals, the provision of a much lower level of service than that provided to the general public. I think the level of service issue is critical here because it is involved in the entire issue of the concept of "separate but equal." Today that concept is irrelevant in the transportation sector because there is *no* transportation system provided to disabled people on a separate basis which is *anywhere near equal* to that level of service provided to the general public, even considering the low level provided to the general public. In other words, many people would contend that the service to the general public is poor, but handicapped people don't even have that level yet. Someday maybe disabled people will get to complain about poor bus schedules and surly drivers just like the able-bodied population.

This particular discrimination, of course, has had a profound effect on the lives of disabled people. It has a psychological effect, among other things, but it also prevents us from participating in society actively, getting jobs, paying taxes; in effect, paying back some of the cost that is incurred in providing the transportation services in the first place.

This lack of mobility in many cases even affects the participation in the fundamental democratic process, the right to vote. Without transportation, in many cases it is impossible even to cast your ballot in an election, something which means that, at least in part, disabled people are excluded far more or just as much from the process as black people were by closed polls and poll taxes and so forth.

Section 504 of the Rehabilitation Act of 1973 was the catalyst which sparked the Department of Transportation to move from a weak planning regulation that was not quantifiable to a strong one requiring transit agencies to provide meaningful service to disabled people. For all of its other weaknesses, the DOT 504 regulation does overcome many of the inadequacies of the "local option" system. The "local option" concept is very important because it is crucial in the battles occurring on the Hill today.

Not surprisingly, the proponents of "local option" are not happy to lose their option of substituting a meaningless symbolic feature, such as curb-to-curb service, for the provision of a level of service that will meet the real transit needs of disabled people. Again, the specter of exorbitant cost has been raised to defeat the current 504 regulation. A seemingly impressive battery of highly sophisticated, technical, and easily misunderstood information has been assembled against it. It is doubtful that disabled citizens can muster the resources needed to meet this onslaught.

The principal force in this fight against the participation of disabled people in society is the powerful multibillion dollar transit industry represented by the American Public Transit Association (APTA), a lobby group funded primarily by dues from its members. For the most part, APTA's members are public transit agencies across the country. Well over 60 percent of the funds used to pay their membership dues comes from public monies, taxes. Some systems make as little as 6 percent of their money from the fare box. That means 94 percent of the income of that transit agency is from public money, and that means that, when they pay their dues to APTA, 94 percent of their dues are tax monies.

Some of these taxes are even collected from disabled taxpayers. Thus, APTA is a *publicly* funded body with *no public accountability* that consistently lobbies for laws that will allow its members to discriminate against people solely on the basis of handicap.

Now, we have been traveling down this same road for some time. In 1970 section 16 was added to the Urban Mass Transportation Assistance Act, requiring transit agencies to undertake "special efforts" to meet the needs of handicapped people. Shortly after that amendment was adopted, there developed an entire new debate about what were "special efforts." Who was to benefit by them? What was the disability category that was talked about? In spite of the fact that section 16 defined "handicapped" as anyone who, by reason of illness, age, congenital malfunction, or disability, was unable to utilize transit services as effectively as others, it was contended early on by the Urban Mass Transportation Administration (UMTA) that that somehow did not include people in wheelchairs, a curious interpretation I have never quite understood to this day.

It took the Department of Transportation until April 30, 1976, to even adopt regulations which explained the meaning of special efforts and those regulations relied very heavily on "planning" aspects. The transportation improvement plan (TIP) adopted by a transit agency immediately after September 30 of 1976 would have to identify specific projects and project elements designed to provide transportation for handicapped people. By September 30, 1977, 1 year later, they were to have shown significant progress in implementing those planned projects.

Today—at least unless it has changed in the last few hours—Chicago Transit Authority provides *no* service whatsoever under those regulations. The Massachusetts Bay Transit Authority, which does have a demand-responsive system, originally programmed funds in their TIP to meet the requirements of the 5 percent of the section 5 allocation that they were required to spend; within 3 or 4 months they submitted a TIP amendment and reduced the level of money. They did this on three separate occasions. On the fourth occasion they were finally told that they had to average this 5 percent requirement over 3 years, and this was the last year they were going to be allowed to circumvent the regulation. Today, as far as I can tell, they have yet to really implement any kind of service at the level that they were required to.

There are a number of services available in the country, funded ostensibly under the special efforts requirement and regulation, which provide highly discriminatory services. They are restricted in time; they don't operate during the same service hours; they don't operate in the same area as the service provided to the public; they require 24 hour advance notice. For example, the call I placed yesterday to the Department of Transportation in which the person said they could meet with me within a half hour, that was impossible to plan 24 hours in advance. I would not have been able to attend that meeting in most, if not all, of the cities in this country where some kind of service is provided.

In addition to that, there is almost always a requirement for registration. I have to get a doctor's letter, or a signed statement from a social service agency, in order to even be allowed to participate in the transportation program.

A friend of mine from San Francisco, who is here in Washington today, who uses a wheelchair tried to get a card from Metro which would allow him to pay the half fare for disabled people. He was denied. He was told that he had to have a note signed by his doctor, a form filled out and submitted in Metro, in order for him to purchase the half-fare cards even though he had with him a valid card issued by Bay Area Rapid Transit.

Time after time I have been in cities where I have attempted to utilize the transit system for disabled people and I have been denied on the basis that I do not live in that area. I have not lived there and I don't have a valid "certification," even though I am obviously sitting in a wheelchair.

Two illustrations are especially significant. I have been a consultant for several years now to the American Public Transit Association's elderly and handicapped mobility task force. We had two meetings which were very interesting. One was in Denver, Colorado. The chair of the task force was the chief counsel of Denver Regional Transit District (RTD). Many of you may have heard about this wonderful transit system in Denver for disabled people, that, incidentally, serves 170 folks. Before the meeting I called this particular gentleman to ask about transportation, since RTD was sponsoring the meeting of this task force, which is supposed to solve and deal with the issues of transportation for handicapped people. I was told that I would be unable to utilize their system and RTD would not provide me any transportation from the airport to the meeting site. I had to call friends who I know in that city to get a van to take me from the airport to the hotel to participate in this meeting.

The second day of the meeting, as part of a demonstration program, RTD had a bus with a lift on it to take people around. It was only by the concerted efforts of most of the members of the task force and [by] impressing upon the chief counsel—and Mrs. Cass was there at the time and can attest to this—it was only after basically twisting their arms that Denver RTD even allowed this bus to take me back to the airport after the meeting.

The second occurrence was for a similar meeting of this same mobility task force in Houston, Texas, another city which ostensibly has a transportation program that the American Public Transit Association gave a lot of press to in their publication *Passenger Transport*. Once again APTA refused, was unable to provide any kind of transportation to and from the airport and this meeting. I think it is rather ironic that this organization which claims to have an inside track on the solution of these problems can't even provide ransit for its own members. I think that is rather interesting.

Getting back to some of the problems involved in meeting the transit needs of handicapped people: When the DOT 504 regulation came out, it was immediately attacked as an extremely expensive system that could not hope to solve the transit needs of the majority of disabled people. It was going to cost money. The fact is that any service to disabled people will cost money. It is now a question of whether or not we are going to spend money on one kind of system or another and which one is cheapest and which one is really going to do the job.

From my perspective, I have an answer to that. APTA has another answer. They believe the way to solve this problem at a cheaper cost is by providing specialized services (door to door), but because these services are extremely expensive, the only way that they can operate is to provide demand-limiting restrictions that are in fact discriminatory against disabled people.

When we moved from the old regulation, the "local option" plan, to the new regulation, which finally has a quantifiable measure of a transit agency's compliance with nondiscrimination, we now see introduced into the House Surface Transportation Act an amendment that would go back to the old "local option" planning requirements. The Secretary of Transportation is now to be allowed to accept a "local option" plan submitted by the transit agency instead of enforcing the 504 regulation. This plan would involve an expenditure of at least 3 percent of the section 5 allocation to the urban area.

Now, according to the latest information I have for the entire section 5 program—I believe it was for last year and I suspect it is not going to be changed substantially since we are in a budget-cutting mood—3 percent of the section 5 allocation for the Nation would be somewhere in the neighborhood of $42 million. The average cost around the country for providing the specialized service ride is $8 per one-way ride. In Los Angeles—and I was just talking to a gentleman who is doing an analysis in Los Angeles for a similar kind of system—the price there is $18 per one-way ride. Price in Denver ranges from $12 to $14 per one-way ride. The $8 in many cases is extremely low.

If you assume that "specialized" service is to be provided to wheelchair users only, of which the best estimate we have is some 409,000 in the United States, simple arithmetic would tell you that what you are going to get out of that $42 million is about 13 one-way trips *per year* per person in a wheelchair.

Now, the bill says "at least" 3 percent. You have to spend it to meet particular requirements specified in the amendment. My contention is that whenever you set minimums, minimums always tend to become standards. Everytime you set a minimum of anything, that is basically what it levels out at.

Ostensibly, the gentleman who introduced this bill claims the service standards are so tough that there is no way they could get around providing a meaningless transit system as is now the case. At the same time, the American Public Transit Association supports this bill. Now, I contend that the two together cannot possibly both be right. If APTA supports the bill, they must see it as a weaker one than the one they have, and, if Mr. Howard supports the bill and says that it is very strong, I think there is a slight contradiction there.

There are many things wrong with the Cleveland amendment in the Surface Transportation Act. In spite of having this supposed set of service standards, it really has enormous loopholes. For example, service must be provided *in* the service area; not *throughout* the service area, but *in* the service area. It is conceivable that a legal interpretation would say we only need to provide it in a little piece of the service area. It does have to operate during the same hours, but if service is available on request, the service must be delivered less than 24 hours after the request is made. Well, 23 hours, perhaps?

It is conceivable, since there is no prohibition in that bill restricting the service according to trip purposes, that if the transit agency simply restricts the service to medical purposes or only for work, it could probably meet most of those requirements, as ostensibly "stiff" as they claim to be.

What we see is a return to a kind of system that permits the local transit agency to decide what the level of service is going to be. I think that is a disaster. I think it needs to be overturned, and I think we need to solve the "problems" with the current 504 regulation, not simply subvert it.

I think that one of the actors in this—and there is a section in this paper detailing problems with the Transbus and how that occurred—again one of the primary actors in this scene in trying to get the Transbus overturned was APTA. I think that it is time for, perhaps, this committee, at the very least the General Accounting Office, to begin an investigation to determine whether a public transit agency putting money into APTA, a private organization that has no public accountability, is in fact a misuse of public funds. I contend that it is. I contend that no transit agency in this country should be allowed to spend any of their money to fund an agency which fights for the right to segregate and discriminate against handicapped Americans.

Thank you.

CHAIRMAN FLEMMING. Thank you very much.

[Applause.]

CHAIRMAN FLEMMING. The next presentation will be made by Mr. Charles D. Goldman, who is the general counsel for the Architectural and Transportation Barriers Compliance Board. In this position Mr. Goldman provides general legal services to the Board with respect to compliance and other questions arising under the Rehabilitation Act of 1973.

Mr. Goldman has written on issues relating to the handicapped such as the American Bar Association's *Report on Equal Employment Opportunity for Handicapped Persons,* which appeared in 1977.

We are delighted to have you with us, Mr. Goldman.

## STATEMENT OF CHARLES D. GOLDMAN, GENERAL COUNSEL, ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

MR. GOLDMAN. Thank you very much, Mr. Chairman. It is a pleasure for me to be here. We at the Compliance Board are very grateful for the opportunity to be here. We applaud the Commission for addressing many of these issues head on. I think it is good to get these issues out on the table.

I would like, before I get into some of the transportation-related matters, just briefly to take you back to some of the issues you have addressed in your previous sessions and try and clarify some misinformation that may have been given to you.

There was a question about the uniformity of accessibility standards and what the Board's role was and the other agencies and how they are going to interrelate. Let me report to you the progress of our Technical Standards Committee and the way we are approaching this matter.

What we expect to do when we issue our proposed guideline in July is very clearly indicate to all the world, including the standard-setting agencies, that our minimum guidelines will be defining bottom line accessibility documents. So there will be a Federal standard, in essence, in effect by the time we complete our rulemaking in December.

I am heartened to report to you that participating in our Technical Standards Committee were the very agencies who must implement that document when it is adopted. The Defense Department, Housing and Urban Development, and U.S. Postal Service representatives were present, as were several of our public members, including a practicing architect. Regrettably, the representative from GSA was not always present. But those standard-setting agencies who were present heartily endorsed our approach of telling the world that ours is the minimum, bottom line, accessibility standard.

I believe Mr. Horn raised the question also of whether or not there was a high-level meeting. There was such a meeting. It was a public meeting of the Interagency Coordinating Council chaired by Assistant Attorney General Drew Days.* The essence of that meeting last March was that the Compliance Board should be the lead agency, should be the focal point to come forward with a minimum, Federal-wide, government accessibility standard. The Council also gave us our marching orders to come out in July with a proposed rule and come out with a final rule in December. I am very pleased to say that we are on our tentative schedule and we definitely should have something in the *Register* in July.

So let's clarify the record on those two points.

And let me just add one other point: Our approach is, in essence, what Mr. Mace said it should be. There are very common features and it doesn't matter if they are in a residence or a post office; a ramp is a ramp. I mean, these are basic architectural concepts so that designers can know what to do and it will be an understandable format. I can read it, and I figure if a lawyer can read it, an architect should be able to read it. I guess being a lawyer is my own disability.

I would like to compliment Dennis Cannon on what I felt was an extremely well-done and very thorough analysis of the transportation issues.

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* See statement of Assistant Attorney General Drew Days III in response to a request for comments by Staff Director Louis Nunez, June 16, 1980, Exhibit No. 19.

For a moment I would like, also, to bring your attention back to the catharsis that this country went through in the fifties and the sixties regarding other forms of discrimination. It seems to me that we learned a very basic lesson then. We learned that, assuming they could get on it, black people and brown people shouldn't be put on one bus and whites on another. We learned that they should get on the same bus as people who are Caucasian. It seems to me that we also learned that it wasn't enough then just to provide transportation for a black person to go to school; that the whole idea was to integrate people into society.

In the 1970s and the 1980s we are just facing the same issue. This is an integration issue. Mainstreaming, the new charge of the seventies and eighties, is no more than integration was in the fifties and sixties. Disabled persons are the emerging minority of the seventies and eighties. But we have learned a lesson from the fifties and sixties. We have learned that transportation is more than getting from here to there. We have learned that transportation is a socialization process. We have a truly integrated environment when we have women on the bus, when we have blacks on the bus, when we have brown people on the bus, and when we have disabled people on the bus.

I think that along these lines we have seen some efforts that really have attempted to be facilitative, but are reflective somewhat of the attitudinal biases with which we grew up. For example, the term "special efforts." Well, why "special"? Why not "efforts"? Why should disabled persons be "special"? The whole thrust of this integration movement is to bring disabled persons into the melting pot, the amalgam of society. I think the term "special efforts" itself is somewhat patronizing. I would just like to see the word "efforts." I think that is just part of the inherent biases with which people grow up.

I attribute no ill will to Mr. Biaggi in adopting that and introducing it in fighting for his amendment, but I think we have to get the focus on efforts and recognize that it is part of a larger picture.

I would also like to dispel some of the myths that I have heard around town about the cost of accessible transportation stations. I was once introduced at a conference as a man who cost Metro $65 million to provide elevators. I had no such scalp in my pocket. But I think it is helpful for you to understand what the process was because the Metro litigation got a lot more publicity than any other transit litigation. Before a shovel was turned, local groups of Washington-area disabled persons said to the national capital transit group, "We would like to use your system. Build it accessibly." And they said, "Hmm, let's see what we can do."

Then along came the Architectural Barriers Act and there was some doubt in peoples' minds as to whether or not that applied to this new system. Well, disabled groups and responsible officials amended the Architectural Barriers Act and they said—they amended it specifically to apply to Metro in Washington. Now there was no doubt. So Metro said, "Well, now we have to have funds for this." So they went back to Congress and disabled persons went up to the Hill with them and $65 million was appropriated.

But a funny thing happened on the way to the forum, or I should say a funny thing happened on the way to the train station. When they were getting ready to open the Metro, it wasn't accessible. And years before the stations had been getting ready, litigation was filed to ensure compliance with the Architectural Barriers Act, to ensure that those transit facilities would be open.

Metro said in open court that it agreed that the facilities should be accessible, that it wouldn't operate inaccessible facilities. Well, that was fine until we got to the point where the train stations were actually going to be opened. And then, fortunately, Judge Jones continued to say, "Yes, we should have these stations accessible; otherwise, the Architectural Barriers Act becomes meaningless."

I think it is important to understand that the mandate for accessibility in Metro has been on the books for a long time. The mandate for accessibility in transit stations has been the law of this country for 11 years, and that is a continually important mandate. It is a mandate that is somewhat threatened by the Cleveland amendment because the version coming out of full committee would apply the 3 percent limitations to restoration or extension of fixed-rail systems on some of the older subway systems. It is important for you to understand that some of your older subway systems (New York, Chicago) are adding additional lines. There is no reason why new construction should not be accessible. The Cleveland amendment would embrace these new facilities and the renovation of older facilities in your five major subway systems within the 3 percent limitation.

The Compliance Board will be meeting this Thursday and Friday. I expect it will take a position on an opposition to the amendment. I know that Secretary for Transportation Goldschmidt has indicated his opposition to the Cleveland amendment and also the fact that the Interagency Coordinating Council has indicated its strong opposition.

I want to be brief, because I know you are running late and I don't want to take anything away from further discussion of Dennis Cannon's paper. But I think we have to emphasize here that transportation is an essential part of the integration process.

Thank you very much.

[Applause.]

**CHAIRMAN FLEMMING.** Our next panelist is Patricia Cass, the Program Manager of the Office of Transportation Management, Planning and Demonstrations, Urban Mass Transportation Administration. In her position Ms. Cass is currently managing a major research effort on problems involving the transportation of the handicapped. This 4-year, multimillion-dollar effort is expected to generate information that will help make major policy and program decisions regarding the transportation of handicapped persons. She also provides technical assistance to transit planners and operators on transit issues affecting the elderly. She is active in several committees relating to the handicapped, including membership in the American Public Transit Association, Committee on Elderly and Handicapped, and Barrier Free Design Committee of the President's Committee on the Employment of the Handicapped.

We are very happy to have you with us, Ms. Cass.

## STATEMENT OF PATRICIA CASS, PROGRAM MANAGER, URBAN MASS TRANSPORTATION ADMINISTRATION

**MS. CASS.** Dr. Flemming, thank you very much. Let me say it is an honor to be here today. I appreciate the opportunity of responding to Mr. Cannon's paper. As Mr. Cannon mentioned, we have been around on this issue for a long time together, and sometimes apart.

Rather than respond directly to each point in the order made in Mr. Cannon's paper, I should like to describe what we have been doing in the Urban Mass Transportation Administration over the past 10 years to implement our legislative and regulatory requirements for provision of transportation for handicapped persons.

In 1970 the Urban Mass Transportation Assistance Act was significantly amended. Most significant, of course, to us here today is the addition of section 16, or the Biaggi amendment as it is frequently referenced, which stated that, "It is declared to be national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services, and that special efforts shall be made in the planning and design of mass transportation facilities and services so the availability to elderly and handicapped persons of mass transit which they can effectively utilize will be assured."

The 1970 legislation was significant in another aspect in that it changed the future of mass transit from that of a very small capital and research and development agency of something less than $200 million annually to a very large capital and operating assistance agency with over $3 billion annual budget as it is today. So the first significant legislation was in 1970.

Unfortunately, at that time, as we were learning to deal with this new capital program, which grew by quantum leaps—doubled the first 2 or 3 years until it reached a billion dollars and then tended to level off. We had not had this kind of financial assistance to deal with, so we had to learn. We learned slowly and tended to ignore at that time the section 16 portion of our act. We ignored it, unfortunately, for about a year or so as we were trying to deal with the other aspects of the program.

In 1971, though, we turned around what had been up to that time a reverse commute demonstration program into one which was geared to determine if there were a market for specialized transportation services, the extent of that market, and the cost of serving that market. We were interested in specialized transportation services for elderly and handicapped persons, as that is what our legislation specifically required us to deal with.

We funded early on in 1972 four demonstration projects, three of which are still operating without our demonstration assistance. They are operating on their own. We funded these in order to see, as I said, what was the demand for specialized services by elderly and handicapped persons. Was their mobility improved? Did they have a greater independence and self-sufficiency in getting along in the real world? I think we proved this in those demonstrations and in subsequent ones that we have funded.

We also learned at the same time, unfortunately, that productivity of these specialized services was quite low and that costs were quite high, as Mr. Cannon has said.

In 1975 UMTA, in its demonstration program, looked to other providers of special transportation, most particularly the taxi industry and the private nonprofit organizations who already were providing transportation to specific clienteles, either elderly, handicapped, children, or other groups, and we look for a way whereby we could tap their existing resources in order to provide some kinds of specialized transportation services in a more cost-effective manner than we had been previously provided by the transit operator.

Since that time we have funded several projects. They are still going on, and we are finding that there are ways that these services or using these resources is a more effective way of providing a specialized transportation service.

At the same time we were testing these different service concepts, we were attempting to develop within the Department of Transportation, and most particularly UMTA, a working definition of handicapped individuals as it applied to the transportation field. We looked into a variety of definitions that were used in the various agencies, in HEW agencies such as Developmentally Disabled, Rehabilitation

Services, Administration on Aging, and so forth, but we were never able to determine a fit of the clients of these particular agencies and to work them into a definition which we needed to have, we believed, in order to define who we were to supply services to, who were the transportation handicapped.

We looked into the Bureau of Census data, the National Health Survey statistics, and so forth (at that time the 1970 data) to see if they could give us some assistance, and we found that, unfortunately, it really still didn't fit. So what we did at that time was fund, as Dr. Flemming mentioned earlier, a multimillion dollar nationwide survey to determine who were the transportation handicapped, what were their demographic characteristics, what were their needs, and what were their desires. This research project is not over. We have published one very major part of it, which is the results of the national survey, but we are now doing some other surveying into local areas to get a little closer to some of the problems.

While these demonstrations were going on and being evaluated and while our survey was being conducted, UMTA was going about its congressional mandate to improve mass transportation services and facilities for all persons. As we received results from the demonstration projects, we immediately disseminated them to transit authorities in order to provide guidance on how to set up specialized services for transportation-handicapped persons. Many transit operators did set up specialized services based on guidance from our demonstration programs.

Up until—through 1975 or so UMTA had been operating primarily by administrative policy. We had never issued regulations, really didn't know much about it. We issued our first regulation of any kind in 1975, which was joint planning regulations with the Federal Highway Administration. We expanded these regulations in 1976 to become what I believe is the very first regulation in the Department or anywhere to deal with the transportation of elderly and handicapped persons.

As mentioned in Mr. Cannon's paper—I am not sure that he mentioned it in his summary—guidance was provided in this regulation on compliance, and it was called "special efforts guidance," and this guidance became gospel. The transit authority said, "Well, if that's your guidance, I guess that's what you want me exactly to do and that is what I exactly will do."

It was the first time that UMTA had entered the regulatory arena, and I must admit to you we were extremely unsophisticated about how to handle it. We believed that all that was necessary was to issue regulations and immediately everybody would comply. As we look back, we know that is not true and we can look back with a sense of disillusionment at the lack of immediate response, or we can look back with a somewhat more positive—albeit, I must admit, conservative—attitude that, while the response of the transit operators wasn't to redirect immediately all their programs, change has occurred over time and operators, many, many of them, are providing specialized transportation service or are buying accessible buses, which was one of the guidelines provided in that 1976 regulation, or doing both of the above, and some of them, I must freely admit, are doing none of the above.

In 1978 more stringent requirements were issued to all Federal agencies by HEW in the form of the implementation regulations on Executive Order 11914. This then forced us to issue DOT-wide regulations for all our agencies for compliance of section 504 of the 1973 Rehabilitation Act. These guidelines issued by HEW required that each program, when viewed in its entirety, be readily accessible to and usable by handicapped individuals. In the UMTA portion of the regulation, it was determined that the guideline required accessibility on every mode of transit, bus, rail, street cars, or light rail as the new term is, but it did not necessarily require total accessibility on all modes. Consequently, our final regulation required that all buses purchased in whole or part with Federal funds shall be accessible to all handicapped persons, including those who use wheelchairs, and that rail systems shall be accessible to all handicapped persons, but key stations only need be accessible to wheelchair users. And that was how we, working very closely with HEW, interpreted HEW guidelines and wrote our regulations.

The regulation has been in effect for less than 1 year. It is difficult for us to determine if it is affecting the continuation of many of the specialized services that were developed and implemented in response to our 1976 regulation. There is a requirement in our new regulation that an interim service must be provided until the fixed-route transit service has reached program accessibility. So the specialized services may be being maintained in order to supply that interim requirement. If they do change, it will be several years before we will see that.

Mr. Cannon makes the point in his paper that the provision of a separate specialized service would not, in and of itself, deny individuals the benefit of a transit system. After all, public mass transit is not the goal, but the means to the goal. It is a way to get somewhere. Therefore, it should be possible or could be possible to achieve this means in a variety of ways.

Mr. Cannon also suggests that if a transit operator provides a service that is separate and apart from the regular, fixed-route transit service, that service must meet his test of equivalency in order to be in compliance with section 504. In another paper, which is referenced in

Mr. Cannon's paper—it is entitled, "Full Mobility: Counting the Cost of Various Options," and I believe it was coauthored by Mr. Cannon with another person in Synergy Consulting—it was suggested that there may be disabled persons—and I will now call them severely disabled—who will never be able to use fixed-route accessible transit services. If these persons are to have public transportation that they can effectively utilize, some sort of alternate service must be provided. I am not sure that equivalency is the test, as Mr. Cannon says, of what this alternative service must be, but, certainly, effective utilization must have to be.

Disabled people are not homogeneous. Judy said that this morning and I think it has been said several times. Nor is anybody, really. Disabled people who are over 65 probably don't go to work. I never go to the races, but I would give my life's blood to go see Johnny Cash in person. I mean, we all have varying needs and desires and a transit service is hopefully designed to take us to these needs and to these desires.

Mr. Cannon does, in his referenced paper—and, again, not in the paper that he submitted to the Commission, which I would suggest that the Commission put into the record because it is much an expansion of many of his points and I think very valuable for you to have—suggests that if the only way to serve disabled people is with an alternative service but, with Proposition 13-like actions which are being initiated nationwide, that this alternative service will be the first one to be cut from the transit operators' budget. I suggest to you that right now many transit operations, public, mass, fixed-route transit operations, are being cut, are being downgraded because of Proposition 13-like actions. Headways are being increased. Service life of vehicles is being increased. There is now a big effort to rehabilitate old buses in order to keep them on the road longer. Area coverage of transit service may well be diminished. I haven't any examples of that, but I have been told it is happening.

With the philosophy that public mass transportation should be dedicated to serve all people to the very best of its ability, I believe that alternative or, if you will, specialized services must be provided and can be maintained and financed under adverse financial conditions. Maybe we must set some other criteria, such as it be for those persons who cannot use the regular fixed-route transit system. Mr. Cannon suggests that the specialized services are oversupplied and I could not agree with him more. There is a supply constraint and frequently people who need the service, because they have no other way, cannot get on it, and I think that is very unfortunate and I am sure that something could be done about it if we cared to.

Mr. Cannon suggests also that there must be an accessible fixed-route service as a backup to specialized services because, again with Proposition 13-like actions, the special service will either be denigrated or completely disintegrated.

I suggest that we probably can't have it all ways. I believe that a specialized service need not be all that costly if it were dedicated to those persons who have no alternative means of mass transportation.

Ladies and gentlemen, I am honored to be here and I hope I have been helpful in providing you with some of our insights. Thank you.

**CHAIRMAN FLEMMING.** Thank you very, very much. We appreciate your contribution.

[Applause.]

**CHAIRMAN FLEMMING.** The final member of the panel to respond in this particular area is Mr. Peter D. Rosenstein. Mr. Rosenstein headed the Implementation Unit of the White House Conference on Handicapped Individuals throughout the life of that Unit until it completed its work in December 1979. We have heard a little bit about that Unit in previous testimony. It was mandated by the President to act as a catalyst in order to create action and to provide a national climate conducive to the implementation of the recommendations made by the White House Conference to improve the position of handicapped individuals in society.

Mr. Rosenstein, we are delighted to have you with us.

## STATEMENT OF PETER D. ROSENSTEIN, FORMER HEAD, IMPLEMENTATION UNIT, WHITE HOUSE CONFERENCE ON THE HANDICAPPED

**MR. ROSENSTEIN.** Thank you, Commissioner Flemming and other Commissioners. I appreciate the chance to speak here today.

What I will do is address myself initially to some transportation issues and then use a few moments of my time to go into the White House Conference Implementation Unit, which I think may be helpful to your deliberations and decisions.

Concerning transportation, I think something that is key to what has been talked about today is that it has been 10 years. It has been 10 years since the Biaggi amendment was introduced and passed into law. It has been 10 years that we still have, in the general sense, in this country no accessible transportation. We sometimes forget that in transportation we are referring not only to buses and subways, but we are really also talking about airlines, AMTRAK trains, naturally, the fixed-rail systems, taxis in cities that still very often will go by a disabled individual and not stop. It is too much trouble to get out and put a wheelchair in the trunk or try and even make the decision of, "Do I stop or not"?

It has been 10 years of discussion, looking into the problem. That is not uncommon in government. Being a government administrator, and a public advocate, I see government too often—and this is one of the cases—discussing this problem to the point that we have come close to concluding, or many of our administrators and congressional leaders have come close to concluding that what Congressman Biaggi wanted 10 years ago is not feasible—without even trying it. We have reached the point now where there is serious consideration being given to Congressman Cleveland's amendment to take us back 10 years and we have yet to really see, if we make our systems accessible in any large way, that they will be used. We also forget that that amendment sometimes includes the handicapped and the elderly, the elderly being a large and growing sector of our population.

Transbus—$28 million, roughly, was spent by the Department of Transportation to develop Transbus. It is an item that is close to being scrapped without ever being tested. Our two major bus manufacturers refused to bid on it. To them it didn't make good business sense.

There is a company that says it is a feasible proposition. There may be more. One that I know of is DeLorean Motor Company in New York. They have a low-floor, wide-door bus that is being used in Germany. It gets better gas mileage than our buses do, and the Department of Transportation could easily run a demonstration project in a number of cities to see if this type of low-floor, wide-door bus would really serve the purpose intended. Adding a few million dollars to the $28 million spent, I think, would make a good investment.

Secondly, when we talk about, or APTA talks about, the $6 billion cost of making our systems accessible, they usually neglect to add that that is over a 30-year span. They try to make people think that that is a cost outlay tomorrow; it is going to end up on the Federal Government's tax budget this year. It is not. It is a long-term proposition. It is an investment. It is an investment in our entire society to allow people to become independent and functioning, people that we now, and over those 30 years, will spend probably a lot more than $6 billion on if we continue to force them to be dependent on our social service system. Our entire system for people that are either disabled or able bodied is based on dependence, and this is just another concept in that area. We refuse to see this as an investment in people becoming independent. We constantly look at it as another cost of dependence, and it is not.

Mentioned this morning was the cost of our space shuttle. The technology to do what we are asking is there. It took us less than 10 years to walk on the moon. It has taken us 10 years to do even a demonstration project on how to get people from one place to another in an accessible bus. There is something wrong with that.

The Congressional Budget Office has done a study on options and costs that are the basis for some of these new bills and amendments. That study is false in very many areas. One particularly relates back to what was discussed yesterday, and I think Commissioner Berry brought it up, as to how many people use a facility or use a system once it is accessible. And in this case, like in all others, you are not going to know that for a generation to come. You can't just get on the bus if you have no place to go, if you don't have a job to go to, if you don't have a school to go to that is accessible, if you don't have a store to shop in that is accessible. This is the first part of a large system to be developed to make life livable for disabled Americans. It is not a question of will three or four people use it and will it cost $18 for the trip, or, as the Congressional Budget Office states, it may be cheaper to buy everyone a car. Not everybody can drive. In this day and age, where we are conserving gas, that seems a kind of roundabout way to solve a problem, and yet that seems a clear option in some cases for the Congressional Budget Office.

I have just spent 15 months doing a survey and analysis of what has happened since the White House Conference on the Handicapped was held in May 1977. The Implementation Plan, a statement of needs that handicapped individuals felt would make their lives reasonable and allow them to function independently in our society, was the final document of the Conference and the basis for my study. It stated that those that couldn't function independently would get the kind of support systems that they needed. Not what our government determined they needed, an all-or-nothing system, but [one that] would allow people to come in, shall we say, like a Chinese menu and say, "I need *A* and *B* , but I don't need *C.*" We now force people to take *A, B,* and *C* even if they don't need it, and no one ever says that is a waste of money.

The findings of the Implementation Unit were that there was very little coordination among Federal agencies. There is also very little attention given to this entire issue by our executive branch. Unfortunately, the only time that you usually find top members of our executive branch addressing these issues is when they are talking to groups of handicapped individuals and their advocates. These people already know the problems. To come to the President's Committee on Employment of the Handicapped and state what you are going to do is fine, but not to tell the Congress in your budget message or to insist that cabinet Secretaries in enunciating their equal employment policies include handicapped individuals, that is another story. And this is where the discrepancy in our society and in our government at this time occurs.

There is no real focus. The White House Conference requested that a person in the Executive Office of the President be designated as a coordinator for the concerns of disabled Americans. We have a coordinator for women's concerns, for minority concerns, and it was asked that there be a coordinator for the concerns of disabled Americans. That is pretty simple. You hire someone who has some idea of what these concerns are and you ask that person to follow the agencies to see what is happening. That wasn't done. Therefore, we have four different accessibility guides or standards being developed; we have Drew Days saying that the bottom line issues have not been brought up to the level of the President yet through his coordinating committee; we have HEW developing 504 guidelines and most other agencies still not having developed them; we have agencies that are making excuses why they can't be developed; we have agencies spending money on duplication of services dealing with and for disabled individuals without finding out what disabled individuals need in transportation as well as in any other service. We have a glut, approximately 330 Federal programs dealing in the area of disability. Rarely do they talk to each other; rarely do they find out who they are servicing.

When a followup census was developed by the Department of Commerce and the Bureau of the Census to finally determine who are and where are handicapped individuals living—how can we best direct our local and State governments to serve handicapped individuals if we as a Federal Government can't even quite say where these people are and what services they need. The Office of Management and Budget decided that was an appropriate item to cut from the budget, and at this point that census is not being funded.

VICE CHAIRMAN HORN. Excuse me. Could I just at this point see if we could get the draft of that census and what the questions are in the record, if that is available?

MR. ROSENSTEIN. It is available and there is a pretest of that survey being done by the Bureau of the Census; so they would have that available now.

VICE CHAIRMAN HORN. Very good, and if we could get a letter between the Staff Director and the Director of OMB as to the reasons for not funding—that was the question I was later going to ask. I would appreciate that information.

CHAIRMAN FLEMMING. Without objection, that will be done at this point in the record.

MR. ROSENSTEIN. The other indications of where the concerns of disabled Americans stand at this point, and I go back to a comment made yesterday on S. 446, civil rights—that was the amendment to Title VII—the administration would not come up with solid support for that amendment until Senator Harrison Williams on the night before insisted that some kind of statement be made for the administration, and a letter from Stuart Eisenstat was delivered to him the night before the hearings on that amendment were held. There were conflicting statements given by the Equal Employment Opportunity Commission, which said basically it favored it but didn't have the staff to handle it, 504 [section of the] Office for Civil Rights in HEW, which had a very nebulous kind of statement saying, well, maybe it is a good idea. The strongest statement of support came from the Department of Labor. But the administration, as one spokesperson, could not get itself together to support this amendment until the night before.

In the case of transportation, as in social services, a civil or human right is a civil or human right for an individual. We don't base our demand for civil and human rights on large groups of people and whether the dollar cost is worthwhile. We have never done that in this country as far as I know and accepted it—though we have sometimes tried to do it. We have never accepted it, and I don't see why, because the disabled community in this country is now developing its own civil rights movement and because some people feel our economy is in more trouble than it was a few years ago, we should suddenly change our entire social value system and determine that civil and human rights become cost factors, become a matter of how much does it cost to give someone their civil rights. I think that is a—well, I wouldn't use the word I would like to use here, but just considering that, I think it is a terrible thing, and I think we are as a government at this time considering that.

The last topic I would like to comment on is coordination and, to show how complex these things are, we must look at the new Department of Education. What we have succeeded in doing with that Department is splitting apart the agencies who deal with the concerns of disabled Americans. We took Rehabilitation Services Administration, split Developmental Disabilities away from it, left Developmental Disabilities in HHS, moved the rest of RSA to the Department of Education. We took the Office for Civil Rights, which is supposed to handle the concerns of 504 and 94–142, which is the guarantee of a free equal appropriate education, and split the Office for Civil Rights, leaving part of it to deal with HHS and part of it to deal with the Department of Education, not increasing anybody's funding for it, just splitting it in half so that the backlog increases and there is less that can be done. We have taken the issues that are the same for the elderly and for disabled Americans and put them into two separate agencies, but many of these issues, particularly long-term care, hospital care, institutionalization, the need for community support systems, are the same. They are not all the same, but there are some points that are the same. They now are in two separate agencies. And we have not as a government developed any mechanism for coordinating these two new Departments. In fact, 6 months after the Department of Education has been established, they have not yet, in all their transition planning, developed the coordinating mechanisms; and in some of the consultations I had with them I would be surprised if they even looked at the possibilities for coordinating some of these mechanisms and some of the concerns.

Legislation will be introduced. It is needed. Administrative action in many of these areas is needed. We have studied and analyzed many of these programs, in the way government does, to death, to the point that we hope the people who first advocated for them will get tired enough and not have the resources to fight to see them through to their fruition.

I would like to submit to the Commission the final draft report of my unit which covers many of the areas that you discussed. It represents an expenditure by the Federal Government of close to $400,000 and has not moved anywhere for the last 3-1/2 months.

It was an investment in time and effort of people around this country in consumer meetings that were held in Denver and San Diego and Philadelphia, in meetings with Governors' liaisons from each State in this Union, in joint meetings, with people coming in from the Virgin Islands and Puerto Rico to attend these sessions, developing State recommendations and Federal activity recommendations that have, for the last 3-1/2 months, not moved anywhere.

If that is indicative along with everything you have heard today of where the priority of this government is concerning disabled Americans, we are in a sad state. I would hope and applaud the Commission's interface with these issues and urge you to act as quickly as possible to see that your feelings and recommendations are made to the appropriately high levels in government.

Thank you very much.

CHAIRMAN FLEMMING. Thank you.

[Applause.]

CHAIRMAN FLEMMING. We apprciate your bringing a copy of your report with you. We will receive it and it will be considered in connection with our work in this area.

[The item referred to is *Report of the White House Conference on Handicapped Individuals Implementation Unit,* Department of Health, Education, and Welfare, Washington, D.C., Dec. 31, 1979.]

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**Chairman Flemming.** Commissioner-Designate Ramirez, do you have any questions?

**Commissioner-Designate Ramirez.** Just one. It may turn out to be too complex, but I will try it anyway.

Mr. Rosenstein touched a very important cord in my thinking when he talked about the OMB study and the definition of a marketplace for services among people who had been discriminated against and the fact that that is a multigenerational concern. That leads me to think a great deal about your market study, Ms. Cass, around people who would use the transportation system. I have a great deal of concern about that because that occurs in other areas of discrimination also.

I wonder if you can tell us, first, what you found thus far and what your perception is of the problems developed by Mr. Rosenstein and how your study can attend to that.

**Ms. Cass.** you are absolutely right; that is very complex. We have completed the national survey and there has been a report published. I will be happy to submit it to the Commission, if you like. Some of the numbers which are in the paper done by Mr. Cannon are from that survey. For instance, we found 4.7 million handicapped persons over 5 years of age living in urban areas. We found that they don't take as many trips on a monthly basis as you and I probably do. We found that they are underemployed, that they are female, and that they tend to be old. We found that 47 percent of this population is over 65.

It is that——

**Commissioner-Designate Ramirez.** Did you find that there was a marketplace that——

**Ms. Cass.** We asked them a series of questions regarding their utilization of existing transportation services, recognizing at the time we conducted that survey that none of them were accessible. Some are now, but none then.

So what we asked them is, what kinds of services—excuse me. We described some services to them such as an accessible fixed-route bus and subway system, or a door-to-door system, and so on, and we asked them if they would use it, how many of them would use it, and how often would they use it, how more often would they use it than they are now traveling. We got very high numbers on all of these. Door-to-door came out better than accessible fixed-route, but, you know, wouldn't you rather have it come to your door, too?

Now, relating to what Peter said, I am having problems because I guess I forgot.

**Mr. Rosenstein.** Well, I had mentioned the Congressional Budget Office study.

**Ms. Cass.** Oh, the CBO report. I thought you said OMB. I'm sorry.

Congressional Budget Office did use our demand data developed from this national survey. They used a great many of the numbers, if you will, the dollar numbers which we developed while we were doing the economic analysis of the 504 regulations. They used them differently. They designed what they thought would be a transit system different from what our regulation required, and they decided that there are some people who can use this and then there are some people who can only use something else. So the base is numbers supplied by UMTA, DOT, but changed to do what he felt would be the more appropriate action, as the economic numbers were supplied to CBO by the Department of Transportation.

So that is where it is. And I will submit the CBO report to the Commission, if you would so desire.

**CHAIRMAN FLEMMING.** We would appreciate it.

[The report referred to, which is on file at the Commission, is: U.S., Congress, Congressional Budget Office, *Urban Transportation for Handicapped Persons: Alternative Federal Approaches,* (Washington, D.C.: Government Printing Office, 1979).]

**CHAIRMAN FLEMMING.** Commissioner-Designate Berry?

**COMMISSIONER-DESIGNATE BERRY.** Mr. Goldman, I am somewhat puzzled by your statement that you were responsible or that your organization was responsible for setting a uniform standard and then, in fact, when the proposed rules come out there will be a uniform standard and that the previous discussion that we had heard was erroneous. Is it a matter of law that you set standards or is it a matter of policy made by the Interagency Coordinating Committee?

**MR. GOLDMAN.** It is a matter of law that the Board is to issue minimum guidelines and requirements which are to form the basis for accessibility standards issued under the Architectural Barriers Act. The agencies will have the discretion to establish higher standards under the Architectural Barriers Act, but their standards must conform to our minimum guidelines. That is under the Rehabilitation Act amendments of 1978.

**COMMISSIONER-DESIGNATE BERRY.** But HUD and GSA apparently don't know that, since they didn't know it when they were here today.

**MR. GOLDMAN.** Well, the HUD representative—with all due respect, Commissioner, the HUD representative supported that decision last Thursday.

**COMMISSIONER-DESIGNATE BERRY.** Well, perhaps there needs to be some further clarification that the staff could find out for us, because I find it completely confusing.

Will your proposed rules include the ANSI standards?

**MR. GOLDMAN.** That is a subject for consideration for the members. Let me say exactly what we are doing in regard to the ANSI standards. There is a wealth of technical information in there. The Board has previously considered and rejected adopting the ANSI standard by reference, as one of the members proposed. The proposed rules will draw extensively on the best technical information available. I am loathe to prejudge what my members will do. However, we are most cognizant of the efforts that have been made in recent years, including those by ANSI.

**COMMISSIONER-DESIGNATE BERRY.** Thank you.

**CHAIRMAN FLEMMING.** Commissioner-Designate Ruckelshaus?

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** Tell me, Mr. Rosenstein, when you submitted your report, I assume it was accepted by the President.

**MR. ROSENSTEIN.** That would be an assumption.

**COMMISSIONER-DESIGNATE RUCKELSHAUS.** What happened to your report?

**MR. ROSENSTEIN.** All right. The report—the entire operation—I did not want to get into depth on that, but after the President committed himself to a followup of the White House Conference, nothing happened for a year and a half. It was finally through HEW, through Secretary Califano at the time, that it was determined something should be done on that promise. The unit was set up through the Rehabilitation Services Administration, which was somewhere down the line in HEW. And, if you know the clearance procedures, it takes months and months before you ever get anything from one level to the other in most Federal agencies.

So that at this point this report was submitted to the Commissioner of RSA and it has gone no further than the Commissioner's desk in 3-1/2 months. It hasn't even begun to make its way up the system. What complicates that now is that RSA is no longer in HEW; it is in the Department of Education.

So that unless the whole scope of work of people around the country contained in the final report is looked at by an outside source, it may never see the light of day. And like most government reports, within a year it becomes outdated, recommendations and considerations are outdated.

It was sent to the Domestic Council at the White House, to people who assisted us at various times along the way, even though we got criticized for daring to go directly to the White House and not through the HEW process. But in a year and a half's time, there just wasn't enough time to go through the HEW process, so we went to the White House.

So that report has never been "cleared" by everybody who is going to have to clear it. I am no longer with the Federal Government and am working as someone on the outside as an advocate to see that some of the information that people worked very hard on doesn't get lost. It would be a waste of money and human man hours to see it get lost.

COMMISSIONER-DESIGNATE RUCKELSHAUS. So there is nobody left, really——

MR. ROSENSTEIN. The Unit is over. It was turned in to the Commissioner of Rehabilitation Services Administration for him to see that it got cleared and printed. There was a $30,000 allocation made for printing of the report within this fiscal year, but it cannot get printed till it gets cleared, and it can't get cleared till someone makes the effort to clear it. So you have sort of a Catch-22 situation, which isn't unusual.

COMMISSIONER-DESIGNATE RUCKELSHAUS. You certainly do. That document is important to have called to someone's attention.

MR. ROSENSTEIN. I think so. It is a draft report at this time.

COMMISSIONER-DESIGNATE RUCKELSHAUS. But, in any case, it is important to get it in the hands of your constituents——

MR. ROSENSTEIN. Definitely.

COMMISSIONER-DESIGNATE RUCKELSHAUS. —so that they at least have some kind of working document.

MR. ROSENSTEIN. No question. It would be useful and has been requested by the States and Governors' liaisons in each State, which we developed. Each Governor assigned a liaison to our office for the year and a half. It has been requested by them. It has been requested by the more than 350 participants in our consumer seminars and by the wide network of people around the country who want to know the status of the Federal Government operation.

COMMISSIONER-DESIGNATE RUCKELSHAUS. If it can ever get cleared, then will it be printed by the Government Printing Office?

MR. ROSENSTEIN. Hopefully. It could be Xeroxed at a very reduced cost.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Okay.

Ms. Cass, do you have any statistics on how many municipalities are now offering something?

MS. CASS. I have a list of probably 75, and I think it is a year old. It is done by word of mouth. I can't give you an exact number.

COMMISSIONER-DESIGNATE RUCKELSHAUS. The list of 75 is a year old?

MS. CASS. Seventy-five cities who are providing specialized service. And when I say 75 cities, I am saying 75 transit operators. Now, in every city in the country there are some kinds of specialized services. For instance, in Los Angeles, where Mr. Cannon comes from, a study was made that identified 400 agencies, social services agencies, of one kind or another who are providing specialized services to a special user group. So when I say 75 cities, I am saying these are transit operator-funded and managed specialized services.

COMMISSIONER-DESIGNATE RUCKELSHAUS. I have a little article here that was called to my attention that points out two problems, but it is only one that I am going to ask you to respond to. It says the City of Ithaca, New York, had decided not to follow—and the wording here is "the apparent federal requirement to add lifts to the city buses after learning that the bus at the University of Cornell, which had been fitted with a lift, had had nobody use it in the year that it had been in operation." Now, I assume if they refuse to do that, they should be offering some other option.

[See Exhibit No. 20 for the article described.]

MS. CASS. No. If they refuse to do that, they cannot purchase a bus—could not in the last year have purchased a bus if they are receiving assistance from us, the Urban Mass Transportation Administration, unless it has—unless that bus is accessible.

Now, they may not receive financial assistance from us. I am afraid I don't know. Ithaca sounds like it would be a large enough urbanized area that it would.

COMMISSIONER-DESIGNATE RUCKELSHAUS. At the moment no Federal money will flow where there is discrimination.

MS. CASS. No Federal money will flow unless that transit agency purchases accessible buses. Yes, you are quite right.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Okay, thank you.

I have another question. I really enjoyed your paper, Mr. Cannon. Thank you very much for taking the time to put that together. It was very useful to me and I am sure to many people.

I think I know how I would respond to this, but in this same article I received it calls attention to an interesting problem, and that is on the campus at Cornell money was spent to make accessible the facilities there. There is not a fuss made about the fact that money was spent, but only that in providing sidewalk cuts the university then began receiving a lot of complaints from their blind students who said this was a real difficult situation for them and that they felt in some way that their accessibility had been impeded by another group. There is mention made here of having to send guide dogs to special training courses to learn how to deal with sidewalk cuts.

How would you respond to that?

MR. CANNON. This issue has been raised in a number of areas. I remember going through it in Los Angeles with the claim by the Los Angeles City Council at one point that blind people would find themselves out in the middle of streets and somehow would get run over by cars, and I asked them, after hearing a number of such statements, whether they had ever heard this from blind people themselves. The fact was, no, they had heard it from a number of rehabilitation professionals who claimed that this would occur. I talked to blind people directly and asked them whether or not they typically know where the curb is. You know, how do they know where the crosswalks are and so forth, and most blind people either go through some kind of mobility training with a friend or they find the lamppost, or the traffic signal post, etc.

My understanding from talking to a lot of people is that in most cases these curb cuts are not a problem. I don't think I have ever heard a blind person tell me that they really have difficulty getting in—you know, ending up in the street—that they can't tell.

Now, there is some problem with a curb cut that is so gradual that it might not appear that there is a ramp, but—I don't know—none of the curb cuts in Washington, to my knowledge, fit that category, since they almost dump you out into the street whenever you go down one.

There have been efforts made in various places of putting grooves along the front edge of the lip. That again is another technological solution. There are solutions to that. Blind people use curb cuts all the time in lots of cities.

One of the most important considerations is that the location be uniform. In other words, in Los Angeles, for example, where they put one curb cut on each corner, a fan-shaped one at a 45-degree angle right along the radius of the curb, it is important that you maintain that throughout the city, that you don't suddenly at the next one put a little small curb cut over at the side facing the crosswalk, that you don't then put something that juts out into the street with a railing around it. I mean, there are very strange designs of curb cuts.

In the early days in Los Angeles, before they settled on a uniform format, they had a lot of experiments and there are still some around that have railings and peculiar cuts and so forth. The biggest complaint that we have had from blind people in the Los Angeles area is, "Please, settle on something so that we know what to expect at a corner; that when we come to a corner we know that the ramp is going to be essentially in the center, that one crosswalk is at a 45-degree angle off this way and the other crosswalk is at a 45-degree angle off this way."

Again, it is a design solution that can be solved. I said before that the biggest barriers are attitudinal. I would like to give you one little example in the transit industry of what I mean.

A conversation between an official of the Department of Transportation and an official of the Chicago Transit Authority took place recently. The 504 regulation requires that only a portion of the platform of a rapid rail station be accessible and one vehicle or one car per train. Chicago would like to make the *entire* platform and *all* cars accessible, based on some very spurious reasoning, which enormously increases the cost.

When the DOT official said, "Well, instead of doing that, why don't you put the car, the accessible car, in the middle of the train instead of at the ends where it causes problems"—it apparently never occurred to them to do that—"and then you could have only a portion of the platform accessible adjacent to the car," the Chicago Transit Authority official said, "Oh, no, no, we couldn't do that. How would the disabled person know where the accessible portion was?" The DOT man said, "Well, you could mark it on the platform." "No, no, that would never work. We can't do that. There are lots of people in this city who don't speak English." So, the DOT man said, "Well, why don't you use the international symbol?" "No, no, we couldn't do that because what if it were a different place in each of the platforms, how would they know where it was?" DOT said, "Well, isn't the idea of the regulation to make it the same place on each platform?" "Oh, we couldn't do that because that would cause all sorts of problems."

DOT finally gave up because it was so clear that the attitude was there not even to consider any possibility of finding a solution to this problem. It was a blatant, absolute resistance to an idea, and that is the kind of thing that has been going on for years.

Incidentally, the claim that fixed-route buses don't work, I would like to point out, is usually based on a very poor example, Bi-State St. Louis, whose own director of operations has stated in a national magazine that "Bi-State is 20 to 30 years behind the industry in maintenance."

There are a number of other systems which are accessible. I would like to recommend, and I will give you a copy of this report, six case studies of phase-in of accessible buses. While each one of them has some problems and some difficulty in a particular area, you will find that almost invariably whatever that problem is a different transit agency has solved it. If you read this, you will discover that while there are difficulties and there are problems in implementing accessible buses, it is a do-able thing.

**Chairman Flemming.** Thank you very much. We appreciate your making that available to us.

[The item referred to, which is on file at the Commission, is: Urban Mass Transportation Administration, *Phase-in Accessible Buses: Six Case Studies* (Washington, D.C. 1980).]

**Chairman Flemming.** Commissioner Horn had to leave in order to catch a plane to the West Coast. Before he left, he asked me if I would address this question to Ms. Cass: Even though OMB cut the funds for the special census, could not the Department of Transportation fund such a census by reimbursing the Bureau of the Census? Has that been discussed?

**Ms. Cass.** Well, I was really surprised, Dr. Flemming, this morning when I heard it had been cut, because we have dedicated several million dollars to help fund that follow-on disability census, and this is a surprise to me.

Census did say that it could not afford to do it. OMB came to us several months ago—us, DOT—and every other agency and asked, "Would you be willing to participate?" We did commit ourselves to participate, and so I am surprised.

**Chairman Flemming.** Well, we are going——

**Ms. Cass.** And I am going to check into it.

**Chairman Flemming.** Well, we are going to have to clarify the record on that. We have conflicting testimony as to whether——

**Mr. Rosenstein.** OMB did cut $10 million out of the Bureau of the Census budget, took it out, and then the Bureau of the Census, through their initiative and the initiative of many individuals and Congress people, went back and said, "Well, can't you get a bunch of agencies to try and ante up the money since OMB doesn't think it's important enough?" And that is what the followup was. My understanding is that there is still not the total there to conduct this census, but it was cut.

**Chairman Flemming.** We did receive some testimony to the effect that the so-called minicensus in 1982 was going to be cut, but we will get the final word on that. We know where to go to get the final word on it and we will, and we will straighten the record out on that particular point. Mr. Nunez, do you have a question?

**Mr. Nunez.** Yes, for Ms. Cass. Following up on your enforcement effort in ensuring that municipalities or transit authorities that do get support from your agency do have accessible transportation, what percentage of the transit authorities in the country would you say are covered under your program?

**Ms. Cass.** Of the public transit authorities, I would say probably 95 percent, maybe 100 percent.

Do you think that is fair, Dennis? I think so.

There are some few private operators, but they get fewer and fewer every year, as they are being taken over by the city governments. They are usually being taken over using Federal funds.

**Mr. Nunez.** How do you enforce this regulation? Do you have staff for enforcement?

**Ms. Cass.** We are at this time—the first thing they have to do is they must provide us with a plan of how they are going to buy buses and what they are doing with them. That is due on the 2nd of July of this year. There is a group of people now developing compliance criteria within the Department from which those transition plans will be reviewed. Our Office of Civil Rights has a major role in that, as the compliance part does rest with them.

So that is evolving over time, but it will have evolved by the 2nd of July.

Mr. Nunez. It is a relatively new program.

Ms. Cass. The regulations have been effective for less than 1 year.

Chairman Flemming. At the opening of the consultation yesterday morning, I indicated that if any person participating in the consultation felt that we had omitted something which shouldn't be omitted, that we would be glad to have that person contact the staff and that we would be glad to accord that person the opportunity of making a presentation under what we refer to as our 5-minute rule. We do this in connection with public hearings. This is the first time we have done it in connection with a consultation.

I am informed by the staff that Ms. Hedwig Oswald who is Director of the Office of Selective Placement Program in the Office of Personnel Management would like to make a brief statement.

Before I recognize her, may I express to the members of this panel our gratitude for the kind of information that you have presented to us. I think it made it possible for us to wind up on a very important note and I particularly appreciate, do appreciate, the summary of the followup activities in connection with the White House Conference. We, in turn, I think, can follow up on that and possibly help to bring that to life.

I did want to ask you one question on that. Did you have an advisory committee that worked with you on the preparation of that report?

Mr. Rosenstein. I had two Federal agency Commissions, one made up of 30 Federal Departments and Commissions, one intra-HEW committee out of 30 components of HEW, and a 22 member national advisory committee of consumers, providers, and parents of handicapped youngsters who were associated with this report.

Chairman Flemming. Were those who served on the, what I might call the outside committee, persons who also had participated actively in the White House Conference?

Mr. Rosenstein. Yes, they were. Charles Hoehne, who testified yesterday, was a member of the committee. One of the requirements was that they were active in developing and participating in the White House Conference.

Chairman Flemming. Thank you all very much. We appreciate it very much.

Now I will recognize Ms. Oswald. Ms. Oswald, we appreciate your being with us.

The Commission will accept unsolicited papers on the following bases: 1) The Commission will not pay for such papers; 2) the Commission may publish (in whole or in part) or may not publish such papers; 3) If published by the Commission, such papers are in the public domain; and 4) Such papers may or may not be included in the proceedings.

## STATEMENT OF HEDWIG OSWALD, DIRECTOR, OFFICE OF SELECTIVE PLACEMENT PROGRAMS, OFFICE OF PERSONNEL MANAGEMENT

**Ms. Oswald.** Thank you very much, Mr. Chairman, and the rest of the Commission and the people who are here.

My purpose for asking for this time is because the Office of Personnel Management has seen many changes since civil service reform of about 18 months ago and because of the changes that affect enforcement of the whole civil rights area in Federal employment that has moved to EEOC. I thought that both Ms. Kaplan and Mr. Boyd's presentations were very thorough and very good. I have no conflict with them. I wanted to add to them for the record.

I direct the Office of Selective Placement Programs under the Affirmative Employment Program Office, which is headed by an Assistant Director. Parallel with my program is the women's program, Hispanic program, the veterans program, minority, outreach, upward mobility. This answers some of the questions I think you were asking yesterday about why are the employment programs not in the civil rights area. This is also parallel within our own internal operations within OPM in the management of our own program.

Basically, our function is one of technical assistance in all personnel actions. Among the things that are involved are such things as producing tools such as this *Handbook of Selective Placement* , which tells how to do it in a language I think that we can understand. This, by the way, is last year's publication.

Yesterday there was a lot of talk about statistics. This publication is dated February 1980. It also has a narrative discussion and it answers your questions about GS levels, education, other demographic points.

**Mr. Nunez.** Why don't you read the title into the record.

**Ms. Oswald.** *Statistical Profile of Handicapped Federal Civilian Employees,* and I will leave with you some copies.

We have another publication that is in print called *The Handbook of Reasonable Accommodation,* and I think you gathered yesterday that this is a highly controversial, very difficult area to address.

**Chairman Flemming.** Thank you. We will accept that.

[This information is on file at the Commission.]

Ms. Oswald. I would also like to mention that OPM is a member of the Interagency Coordinating Council that is chaired by Drew Days. Jule Sugarman, who is the Deputy Director of OPM, serves as OPM's designee. He has been very active, particularly as he was called upon by Mr. Days to help mediate some of the controversies and overlaps between the Barrier Board and section 504.

Now, just very quickly, let me talk about the Civil Service Reform Act. In the merit principles that precede or preface the act, there is a very important statement about equal employment opportunity for all the traditional groups (race, sex, etc.) and it adds "handicapping condition." To my knowledge, this is probably the first statute that serially takes in handicapped conditions or mentions disability anywhere. It has a great meaning because this does in fact provide the basis for accountability in affirmative action for managers.

Personnel appraisals. You have heard about the reform in the Federal pay system. Merit pay is now dependent upon personnel appraisal systems. One example: the senior executive service. We talk about getting support from the top. Well, this is one wedge to help get that into the Federal system.

In addition, a part of the act provided Federal agencies with the authority to pay for the services of readers for blind people and interpreters for deaf people. This, of course, had been done on a haphazard or other activities only [basis]. Now the authority is there with special appointments available for readers and interpreters. Also the act provided for special appointing authorities for 30 percent disabled veterans.

The Garcia amendment, also known as the Federal employment opportunity recruitment program, focuses on minorities and women. It provides and requires agencies to do outreach recruitment. Mr. Garcia did not include handicapped, principally because there was no basis for computing underrepresentation in the work force and the law requires this computation. However, EEOC, in their affirmative action requirements for the handicapped, have included this concept. So I think we soon will be seeing—as soon as we can solve these census problems—that this kind of bottom line can be computed. This approach is going to do a great deal in the whole area of employment of the handicapped, whether it be in the public or private sector.

Other things, just to tick off a few, that this new climate has generated: We presented last week to the Congress a bill that we hope will work. It provides for payment of services for personal assistants for severely disabled employees at the worksite and while in a travel status.

Other things that have been going on involve a great deal of research in the area of alternative selection procedures. As we go along in trying to do job-related testing and examining, we must be careful that any of the new things that we devise will not be worse than the pencil and paper tests that have been found to be invalid.

In conjunction with some of these requirements for job-related tests, OPM is doing a mammoth job analysis study of about 14 occupations. This is for purposes of developing new selection procedures. Also, we have proposed a demonstration project to look at reasonable accommodation while the other analyses are going on. So perhaps for government wide and for all employers we will get some kind of handle on reasonable accommodation in a more structured and valid way.

Physical standards have been modified to remove the nonjob-related types of language, and I think this is going to help to beat down or get around the attitudes and language that selecting officials hide behind.

And then just recently we have also established a new special appointing authority which will give people with histories of mental illness, serious mental illness, an opportunity to get back into the work force. This provides up to a 2-year temporary appointment. The intent is not necessarily that they remain in Federal employment, but at least that they will gain an employment record which is so badly needed to get back into the work force.

So let me conclude by saying these are only a few highlights, but actions which will affect the bottom line we have all been talking about here, that more persons, more handicapped persons, are hired and advanced and retained in Federal employment and, hopefully, will set the example that we would like to see. We have a long way to go. These are a few of the steps and I just felt that this would be of interest to you.

Thank you.

CHAIRMAN FLEMMING. We appreciate very, very much your making this information and this point of view available to us. It is very, very helpful and is very important for us to have it in connection with the record of the consultation.

Any questions?

[No response.]

CHAIRMAN FLEMMING. The consultation is adjourned.

*Exhibit No. 1*

157 Cal.Rptr. 383

## In re the MARRIAGE OF Ellen J. and William T. CARNEY.

**William T. CARNEY, Appellant,**

v.

**Ellen J. CARNEY, Respondent.**

**L.A. 31064.**

Supreme Court of California.

Aug. 7, 1979.

The Superior Court, Los Angeles County, Phillip Erbsen, Temporary Judge *, entered an interlocutory decree of dissolution of marriage which transferred custody of parties' two minor children from father to mother, and father appealed. The Supreme Court, Mosk, J., held that father's physical handicap, which affected his ability to participate with his children in purely physical activities, did not constitute a changed circumstance of sufficient relevance and materiality to render it either "essential or expedient" for their welfare that they be taken from his custody.

Reversed.

**1. Parent and Child 🔑2(3.2)**

Trial courts are no longer permitted to favor the mother in determining proper custody of a child of tender years; regardless of age of the minor, fathers have equal custody rights with mothers inasmuch as sole concern is best interests of the child. West's Ann.Civ.Code, § 4600.

**2. Infants 🔑19.3(5)**

To justify ordering a change in custody, there must generally be a persuasive showing of changed circumstances affecting the child and such change must be substantial.

**3. Infants 🔑19.3(5)**

Although a request for a change of custody is addressed in first instance to sound discretion of trial judge, he must exercise that discretion in light of important policy considerations.

**4. Infants 🔑19.3(5)**

Burden of proving a sufficient change in circumstances is on party seeking a change of custody.

**5. Parent and Child 🔑2(3.3)**

If a person has physical handicap, it is impermissible for the court, in a ruling on a custody matter, to simply rely on that condition as prima facie evidence of person's unfitness as a parent or of probable detriment to the child; rather, in all cases court must view handicapped person as an individual and a family as a whole.

**6. Parent and Child 🔑2(18)**

Father's physical handicap, which affected his ability to participate with his children in purely physical activities, did not constitute a changed circumstance of sufficient relevance and materiality to render it either "essential or expedient" for their welfare that they be taken from his custody.

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Mason H. Rose, Law Offices of Mason H. Rose, Beverly Hills, Marilyn Holle and Mary-Lynne Fisher, Los Angeles, for appellant.

Evelle J. Younger, Atty. Gen., L. Stephen Porter, Asst. Atty. Gen., Anne S. Pressman and G. R. Overton, Deputy Attys. Gen., and Robert J. Funk, El Cerrito, as amici curiae on behalf of appellant.

Baird, Baird, Belgum & Buchanan, Baird, Baird, Wulfsberg, Belgum & Buchanan and Lawrence C. Buchanan, Long Beach, for respondent.

MOSK, Justice.

Appellant father (William) appeals from that portion of an interlocutory decree of dissolution which transfers custody of the two minor children of the marriage from himself to respondent mother (Ellen).

In this case of first impression we are called upon to resolve an apparent conflict between two strong public policies: the requirement that a custody award serve the best interests of the child, and the moral and legal obligation of society to respect the civil rights of its physically handicapped members, including their right not to be deprived of their children because of their disability. As will appear, we hold that upon a realistic appraisal of the present-day capabilities of the physically handicapped, these policies can both be accommodated. The trial court herein failed to make such an appraisal, and instead premised its ruling on outdated stereotypes of both the parental role and the ability of the handicapped to fill that role. Such stereotypes have no place in our law. Accordingly, the order changing custody on this ground must be set aside as an abuse of discretion.

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* Pursuant to Constitution, article VI, section 21.

William and Ellen were married in New York in December 1968. Both were teenagers. Two sons were soon born of the union, the first in November 1969 and the second in January 1971. The parties separated shortly afterwards, and by written agreement executed in November 1972 Ellen relinquished custody of the boys to William. For reasons of employment he eventually moved to the West Coast. In September 1973 he began living with a young woman named Lori Rivera, and she acted as stepmother to the boys. In the following year William had a daughter by Lori, and she proceeded to raise all three children as their own.

In August 1976, while serving in the military reserve, William was injured in a jeep accident. The accident left him a quadriplegic, i. e., with paralyzed legs and impaired use of his arms and hands. He spent the next year recuperating in a veterans' hospital; his children visited him several times each week, and he came home nearly every weekend.[1] He also bought a van, and it was being fitted with a wheelchair lift and hand controls to permit him to drive.

In May 1977 William filed the present action for dissolution of his marriage. Ellen moved for an order awarding her immediate custody of both boys. It was undisputed that from the date of separation (Nov. 1972) until a few days before the hearing (Aug. 1977) Ellen did not once visit her young sons or make any contribution to their support. Throughout this period of almost five years her sole contact with the boys consisted of some telephone calls and a few letters and packages. Nevertheless the court ordered that the boys be taken from the custody of their father and that Ellen be allowed to remove them forthwith to New York State.[2] Pursuant to stipulation of the parties, an interlocutory judgment of dissolution was entered at the same time. William appeals from that portion of the decree transferring custody of the children to Ellen.

[1] William contends the trial court abused its discretion in making the award of custody.[3] Several principles are here

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[1] He was scheduled to be discharged shortly after the trial proceedings herein.

[2] The court also imposed substantial financial obligations on William. He was ordered to pay all future costs of transporting his sons back to California to visit him, plus $400 a month for child support, $1,000 for Ellen's attorney's fees, $800 for her travel and hotel expenses, and $750 for her court costs.

[3] He also contends the ruling violated his right to equal protection and due process of law. (*Adoption of Richardson* (1967) 251 Cal.App.2d 222, 239-240, 59 Cal.Rptr. 323; see generally Achtenberg, *Law and the Physically Disabled: An Update with Constitutional Implications* (1976) 8 Sw.U.L.Rev. 847; Burgdorf & Burgdorf, *A History of Unequal Treatment: The Qualifications of Handicapped Persons as a "Suspect Class" Under the Equal Protection Clause* (1975) 15 Santa Clara Law. 855; Comment, *The Equal Protection and Due Process Clauses: Two Means of Implementing "Integrationism" for Handicapped Applicants for Public Employment* (1978) 27 DePaul L.Rev. 1169; Note, *Abroad in the Land: Legal Strategies to Effectuate the Rights of the Physically Disabled* (1973) 61 Geo.L.J. 1501.) In the view we take of the case we need not reach the constitutional issues at this time.

William further complains that the trial court erred in declining several offers of evidence of alleged misconduct of Ellen occurring at various times prior to the hearing. We have reviewed the relevant portions of the record and conclude that certain of the offers were properly refused because the evidence in question was too remote (*Prouty v. Prouty* (1940) 16 Cal.2d applicable. First, since it was amended in 1972 the code no longer requires or permits the trial courts to favor the mother in determining proper custody of a child "of tender years." (E. g., *White v. White* (1952) 109 Cal.App.2d 522, 523, 240 P.2d 1015.) Civil Code section 4600 now declares that custody should be awarded "To either parent according to the best interests of the child." (*Id.*, subd. (a).) Regardless of the age of the minor, therefore, fathers now have equal custody rights with mothers; the sole concern, as it should be, is "the best interests of the child." (See *Taber v. Taber* (1930) 209 Cal. 755, 756–757, 290 P. 36, 37.)

Next, those "best interests" are at issue here in a special way: this is not the usual case in which the parents have just separated and the choice of custody is being made for the first time. In such instances the trial court rightly has a broad discretion. (*Gudelj v. Gudelj* (1953) 41 Cal.2d 202, 208–209, 259 P.2d 656.) Here, although this is the first actual court order on the issue, we deal in effect with a complete *change* in custody: after the children had lived with William for almost five years—virtually all their lives up to that point—Ellen sought to remove them abruptly from the only home they could remember to a wholly new environment some 3,000 miles away.

[2] It is settled that to justify ordering a change in custody there must generally be a persuasive showing of changed circumstances affecting the child. (*Goto v. Goto* (1959) 52 Cal.2d 118, 122–123, 338 P.2d 450.) And that change must be substantial: a child will not be removed from the prior custody of one parent and given to the other "unless the material facts and circumstances occurring subsequently are of a kind to render it essential or expedient for the welfare of the child that there be a change." (*Washburn v. Washburn* (1942) 49 Cal.App.2d 581, 588, 122 P.2d 96, 100.) The reasons for the rule are clear: "It is well established that the courts are reluctant to order a change of custody and will not do so except for imperative reasons; that it is desirable that there be an end of litigation and undesirable to change the child's established mode of living." (*Connolly v. Connolly* (1963) 214 Cal.App.2d 433, 436, 29 Cal.Rptr. 616, 618, and cases cited.)[4]

[3] Moreover, although a request for a change of custody is also addressed in the first instance to the sound discretion of the trial judge, he must exercise that discretion in light of the important policy considerations just mentioned. For this reason appellate courts have been less reluctant to find an abuse of discretion when custody is changed than when it is originally awarded, and reversals of such orders have not been uncommon. (E. g., *In re Marriage of Kern* (1978) 87 Cal.App.3d 402, 410–411, 150 Cal.Rptr. 860; *In re Marriage of Russo* (1971) 21 Cal.App.3d 72, 98 Cal.Rptr. 501; *Denham v. Martina* (1963) 214 Cal.App.2d 312, 29 Cal.Rptr. 377; *Ashwell v. Ashwell* (1955) 135 Cal.App.2d 211, 286 P.2d 983; *Sorrels v. Sorrels* (1951) 105 Cal.App.2d 465, 234 P.2d 103; *Bemis v. Bemis* (1948) 89 Cal.App.2d 80, 200 P.2d 84; *Juri v. Juri* (1945) 69 Cal.App.2d 773, 160 P.2d 73; *Washburn v. Washburn* (1942) supra, 49 Cal.App.2d 581, 122 P.2d 96.)

[4] Finally, the burden of showing a sufficient change in circumstances is on the party seeking the change of custody. (*Prouty v. Prouty* (1940) supra, 16 Cal.2d 190, 193, 105 P.2d 295; *In re Marriage of*

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190, 194), while others should probably have been accepted but failure to do so could not have resulted in prejudice (*People v. Watson* (1956) 46 Cal.2d 818, 836, 299 P.2d 243).

[4] Ellen relies on *Loudermilk v. Loudermilk* (1962) 208 Cal.App.2d 705, 707–708, 25 Cal.Rptr. 434, which held that the foregoing rule is "not applicable" when custody was originally awarded pursuant to an agreement between the parties rather than a judicial decree. But the opinion gave scant authority for this asserted exception, and it has since been cited only once in dictum. It is also wrong in principle: regardless of how custody was originally decided upon, after the child has lived in one parent's home for a significant period it surely remains "undesirable" to uproot him from his "established mode of living," and a substantial change in his circumstances should ordinarily be required to justify that result. To the extent it declares a contrary rule, *Loudermilk* is disapproved.

*Kern* (1978) supra, 87 Cal.App.3d 402, 410-411, 150 Cal.Rptr. 860; *In re Marriage of Mehlmauer* (1976) 60 Cal.App.3d 104, 108-109, 131 Cal.Rptr. 325.) In attempting to carry that burden Ellen relied on several items of testimony given at the hearing; even when these circumstances are viewed in their totality, however, they are insufficient for the purpose.

First, Ellen showed that although she had been unemployed when William was given custody in 1972, at the time of trial she had a job as a medical records clerk in a New York hospital. But her gross income from that job was barely $500 per month, and she admitted she would not be able to support the boys without substantial financial assistance from William. (See fn. 2, *ante.*) By contrast, at the time of the hearing William's monthly income from a combination of veteran's disability compensation payments and social security benefits had risen to more than $1,750 per month, all tax-free.

Ellen next pointed to the fact that William's relationship with Lori might be in the process of terminating.[5] From this evidence Ellen argued that if Lori were to leave, William would have to hire a babysitter to take care of the children. On cross-examination, however, Ellen admitted that if custody were transferred to her she would likewise be compelled because of her job to place the children "in a child care center under a baby-sitter nine hours a day," and she intended to do so. During that period, of course, the children would not be under her supervision; by contrast, William explained that because he is not employed he is able to remain at home "to see to their upbringing during the day as well as the night."

Additional claims lacked support in the record. Thus Ellen impliedly criticized William's living arrangements for the boys, and testified that if she were given custody she intended to move out of her one-bedroom apartment into an apartment with "at least" two bedrooms. Yet it was undisputed that the boys were presently residing in a private house containing in effect four bedrooms, with a large living room and a spacious enclosed back yard; despite additional residents, there was no showing that the accommodations were inadequate for the family's needs. Ellen further stated that in her opinion the older boy should be seen by a dentist; there was no expert testimony to this effect, however, and no evidence that the child was not receiving normal dental care. She also remarked that the younger boy seemed to have a problem with wetting his bed but had not been taken to a doctor about it; again there was no evidence that medical intervention in this matter was either necessary or desirable. We obviously cannot take judicial notice of the cause of, or currently recommended cure for, childhood enuresis.[6]

In short, if the trial court had based its change of custody order on the foregoing circumstances alone, it would in effect have revived the "mother's preference" rule abrogated by the Legislature in 1972.[7] The record discloses, however, that the court gave great weight to another factor—William's physical handicap and its presumed adverse effect on his capacity to be a good father to the boys. Whether that factor will support the reliance placed upon it is a difficult question to which we now turn.

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[5] Lori candidly testified she had been "thinking about" leaving. She added, however, that "Bill and I have had some problems, just like anyone else in our situation would have, and we are going to get counseling, and hopefully that will settle the matters." And she declared that she loved both of the boys and wanted to continue being their "substitute mother."

[6] In the only testimony on the point Ellen reported that William's cousin, who had been living with the family explained to her the reason the boy wet the bed is "because he wears himself out so much playing that he just doesn't get up at night."

Ellen advanced other grounds for a change of custody that are even more insubstantial. Thus she claimed she wanted to enroll the boys in "some kind of church"—a choice of words scarcely indicative of a deep religious commitment on her part. And she complained that because William had moved several times in the past five years the boys had not had a chance to "get established" in a school or neighborhood—a strange objection coming from one who proposed to move them 3,000 miles. In any event, the record indicated that most of William's moves were job-related and took place prior to the date of his injury, and hence were irrelevant to the family's present situation.

Ellen first raised the issue in her declaration accompanying her request for a change of custody, asserting that because of William's handicap "it is almost impossible for [him] to actually care for the minor children," and "since [he] is confined to a hospital bed, he is never with the minor children and thus can no longer effectively care for the minor children or see to their physical and emotional needs." When asked at the hearing why she believed she should be given custody, she replied inter alia, "Bill's physical condition." Thereafter she testified that according to her observations William is not capable of feeding himself or helping the boys prepare meals or get dressed; and she summed up by agreeing that he is not able to do "anything" for himself.

The trial judge echoed this line of reasoning throughout the proceedings. Virtually the only questions he asked of any witness revolved around William's handicap and its physical consequences, real or imagined. Thus although William testified at length about his present family life and his future plans, the judge inquired only where he sat when he got out of his wheelchair, whether he had lost the use of his arms, and what his medical prognosis was. Again, when Lori took the stand and testified to William's good relationship with his boys and their various activities together, the judge interrupted to ask her in detail whether it was true that she had to bathe, dress, undress, cook for and feed William. Indeed, he seemed interested in little else.

The final witness was Dr. Jack Share, a licensed clinical psychologist specializing in child development, who had visited William's home and studied his family.[7] Dr. Share testified that William had an IQ of 127, was a man of superior intelligence, excellent judgment and ability to plan, and had adapted well to his handicap. He observed good interaction between William and his boys, and described the latter as self-disciplined, sociable, and outgoing. On the basis of his tests and observations, Dr. Share gave as his professional opinion that neither of the children appeared threatened by William's physical condition; the condition did not in any way hinder William's ability to be a father to them, and would not be a detriment to them if they remained in his home; the present family situation in his home was a healthy environment for the children; and even if Lori were to leave, William could still fulfill his functions as father with appropriate domestic help.

Ellen made no effort on cross-examination to dispute any of the foregoing observations or conclusions, and offered no expert testimony to the contrary. The judge then took up the questioning, however, and focused on what appears to have been one of his main concerns in the case—i. e., that because of the handicap William would not be able to participate with his sons in sports and other physical activities. Thus the court asked Dr. Share, "It's very unfortunate that he's in this condition, but when these boys get another two, three years older, would it be better, in your opinion, if they had a parent that was able to actively go places with them, take them places, play Little League baseball, go fishing? Wouldn't that be advantageous to two young boys?" Dr. Share replied that "the commitment, the long-range planning, the dedication" of William to his sons were more important, and stated that from his observations William was "the more consistent, stable part of this family regardless of his physical condition at this point." The judge nevertheless persisted in stressing that William "is limited in what he can do for the boys," and demanded an answer to his question as to "the other activities that two growing boys should have with a natural parent." Dr. Share acknowledged William's obvious physical limitations, but once more asserted that "on the side dealing with what I have called the stability of the

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7. Dr. Share is also a credentialed schoolteacher and a licensed marriage counselor

youngsters, which I put personally higher value on, I would say the father is very strong in this area." Finally, when asked on redirect examination what effect William's ability to drive will have, Dr. Share explained, "this opens up more vistas, greater alternatives when he's more mobile such as having his own van to take them places . . . ."

We need not speculate on the reasons for the judge's ensuing decision to order the change of custody, as he candidly stated them for the record. First he distinguished a case cited by William, emphasizing "There was no father there or mother that was unable to care for the children because of physical disabilities . . . ." Next he found William and Ellen to be "both good, loving parents," although he strongly chided the latter for failing to visit her sons for five years, saying "She should have crawled on her hands and knees out here if she had to get the children . . . ." The judge then returned to the theme of William's physical inability to personally take care of the children: speculating on Lori's departure, the judge stressed that in such event "a housekeeper or a nursery" would have to be hired—overlooking the admitted fact that Ellen would be compelled to do exactly the same herself for nine hours a day. And he further assumed "There would have to be pick up and probably delivery of the children even though [William] drives his van"—a non sequitur revealing his misunderstanding of the purpose and capabilities of that vehicle.

More importantly, the judge conceded that Dr. Share "saw a nice, loving relationship, and that's absolutely true. There's a great relationship between [William] and the boys . . . ." Yet despite this relationship the judge concluded "I think it would be detrimental to the boys to grow up until age 18 in the custody of their father. *It wouldn't be a normal relationship between father and boys.*" And what he meant by "normal" was quickly revealed: "It's unfortunate [William] has to have help bathing and dressing and undressing. *He can't do anything for the boys himself except maybe talk to them and teach them, be a tutor, which is good, but it's not enough.* I feel that it's in the best interests of the two boys to be with the mother even though she hasn't had them for five years." (Italics added.)

Such a record approaches perilously close to the showing in *Adoption of Richardson* (1967) supra, 251 Cal.App.2d 222, 59 Cal. Rptr. 323. There the trial court denied a petition to adopt an infant boy because of the physical handicap of the proposed adoptive parents, who were deaf-mutes. As here, professional opinions were introduced—and remained uncontradicted—stating that the petitioners had adjusted well to their handicap and had a good relationship with the child, and that their disability would have no adverse effects on his physical or emotional development. Nevertheless, in language strangely similar to that of the judge herein, the trial court reasoned: "Is this a normally happy home? There is no question about it, it is a happy home, but is it a normal home? I don't think the Court could make a finding that it is a normal home when these poor unfortunate people, they are handicapped, and what can they do in the way of bringing this child up to be the type of citizen we all want him to be." (*Id.* at p. 228, 59 Cal.Rptr. at p. 327.) The Court of Appeal there concluded from this and other evidence that the trial judge was prejudiced by a belief that no deaf-mute could ever be a good parent to a "normal" child. While recognizing the rule that the granting or denial of a petition for adoption rests in the discretion of the judge, the appellate court held that such discretion had been abused and accordingly reversed the judgment. (*Id.* at p. 237, 59 Cal.Rptr. 323.)

While it is clear the judge herein did not have the totally closed mind exhibited in *Richardson,* it is equally plain that his judgment was affected by serious misconceptions as to the importance of the involvement of parents in the purely physical aspects of their children's lives. We do not mean, of course, that the health or physical condition of the parents may not be taken into account in determining whose custody would best serve the child's interests. In relation to the issues at stake, however, this factor is ordinarily of minor importance; and whenever it is raised—whether in awarding custody originally or changing it later—it is essential that the court weigh the matter with an informed and open mind.

[5] In particular, if a person has a physical handicap it is impermissible for the court simply to rely on that condition as prima facie evidence of the person's unfitness as a parent or of probable detriment to the child; rather, in all cases the court must view the handicapped person as an individual and the family as a whole. To achieve this, the court should inquire into the persons's actual and potential physical capabilities, learn how he or she has adapted to the disability and manages its problems, consider how the other members of the household have adjusted thereto, and take into account the special contributions the person may make to the family despite—or even because of—the handicap. Weighing these and all other relevant factors together, the court should then carefully determine whether the parent's condition will in fact have a substantial and lasting adverse effect on the best interests of the child.[8]

The record shows the contrary occurred in the case at bar. To begin with, the court's belief that there could be no "normal relationship between father and boys" unless William engaged in vigorous sporting activities with his sons is a further example of the conventional sex-stereotypical thinking that we condemned in another context in *Sail'er Inn v. Kirby* (1971) 5 Cal.3d 1, 95 Cal.Rptr. 329, 485 P.2d 529. For some, the court's emphasis on the importance of a father's "playing baseball" or "going fishing" with his sons may evoke nostalgic memories of a Norman Rockwell cover on the old Saturday Evening Post. But it has at least been understood that a boy need not prove his masculinity on the playing fields of Eton, nor must a man compete with his son in athletics in order to be a good father: their relationship is no less "normal" if it is built on shared experiences in such fields of interest as science, music, arts and crafts, history or travel, or in pursuing such classic hobbies as stamp or coin collecting. In short, an afternoon that a father and son spend together at a museum or the zoo is surely no less enriching than an equivalent amount of time spent catching either balls or fish.[9]

Even more damaging is the fact that the court's preconception herein, wholly apart from its outdated presumption of proper gender roles, also stereotypes William as a person deemed forever unable to be a good parent simply because he is physically handicapped. Like most stereotypes, this is both false and demeaning. On one level it is false because it assumes that William will never make any significant recovery from his disability. There was no evidence whatever to this effect. On the contrary, it did appear that the hearing was being held only one year after the accident, that William had not yet begun the process of rehabilitation in a home environment, and that he was still a young man in his twenties. In these circumstances the court could not presume that modern medicine, helped by time, patience, and determination, would be powerless to restore at least some of William's former capabilities for active life.

Even if William's prognosis were poor, however, the stereotype indulged in by the court is false for an additional reason: it mistakenly assumes that the parent's handicap inevitably handicaps the child. But children are more adaptable than the court gives them credit for; if one path to their enjoyment of physical activities is closed, they will soon find another. Indeed, having a handicapped parent often stimulates the growth of a child's imagination, independence, and self-reliance. Today's urban youngster, moreover, has many more opportunities for formal and informal instruction than his isolated rural predecessor. It is true that William may not be able to play tennis or swim, ride a bicycle or do gymnastics; but it does not follow that his children cannot learn and enjoy such skills, with the guidance not only of family and friends but also the professional instructors available through schools, church groups, playgrounds, camps, the Red Cross, the YMCA, the Boy Scouts, and numerous service organizations. As Dr. Share pointed out in his testimony, ample community resources now supplement the home in these circumstances.

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[8] A recent statute makes the point in a closely related context: a child may be made a ward of the court because of lack of parental care and control, but "No parent shall be found to be incapable of exercising proper and effective parental care or control solely because of a physical disability . . . ." (Welf. & Inst. Code, § 300, subd. (a); see, e. g., *In re W. O.* (1979) 88 Cal.App.3d 906, 910, 152 Cal.Rptr. 130 [mother's epilepsy no ground for removing children from her custody].)

[9] The sex stereotype, of course, cuts both ways. If the trial court's approach herein were to prevail, in the next case a divorced mother who became physically handicapped could be deprived of her young daughters because she is unable to participate with them in embroidery, *haute cuisine*, or the fine arts of washing and ironing. To state the proposition is to refute it.

In addition, it is erroneous to presume that a parent in a wheelchair cannot share to a meaningful degree in the physical activities of his child, should both desire it. On the one hand, modern technology has made the handicapped increasingly mobile, as demonstrated by William's purchase of a van and his plans to drive it by means of hand controls. In the past decade the widespread availability of such vans, together with sophisticated and reliable wheelchair lifts and driving control systems, have brought about a quiet revolution in the mobility of the severely handicapped. No longer are they confined to home or institution, unable to travel except by special vehicle or with the assistance of others; today such persons use the streets and highways in ever-growing numbers for both business and pleasure. Again as Dr. Share explained, the capacity to drive such a vehicle "opens more vistas, greater alternatives" for the handicapped person.

At the same time the physically handicapped have made the public more aware of the many unnecessary obstacles to their participation in community life. Among the evidence of the public's change in attitude is a growing body of legislation intended to reduce or eliminate the physical impediments to that participation, i. e., the "architectural barriers" against access by the handicapped to buildings, facilities, and transportation systems used by the public at large. (See, e. g., Gov. Code, § 4450 et seq. [requires handicapped access to buildings and facilities constructed with public funds]; Health & Saf.Code, § 19955 et seq. [access to private buildings open to the general public]; Gov. Code, § 4500 [access to public transit systems]; Pub. Resources Code, § 5070.5, subd. (c) [access to public recreational trails]; see also Veh. Code, §§ 22507.8, 22511.5 et seq. [special parking privileges for handicapped drivers].)[10]

While there is obviously much room for continued progress in removing these barriers, the handicapped person today need not remain a shut-in. Although William cannot actually play on his children's baseball team, he may nevertheless be able to take them to the game, participate as a fan, a coach, or even an umpire—and treat them to ice cream on the way home. Nor is this companionship limited to athletic events: such a parent is no less capable of accompanying his children to theaters or libraries, shops or restaurants, schools or churches, afternoon picnics or long vacation trips. Thus it is not true that, as the court herein assumed, William will be unable "to actively go places with [his children], take them places, . . . ."

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[10] Similar legislation has been enacted on the federal level. (See, e. g., Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157) [requires handicapped access to public buildings constructed, leased, or financed by the federal government]; Rehabilitation Act of 1973, § 502 (29 U.S.C. § 792) [creates Architectural and Transportation Barriers Compliance Board to ensure compliance with Architectural Barriers Act and promote removal of "architectural, transportation, and attitudinal barriers confronting handicapped individuals"]; Urban Mass Transportation Assistance Act of 1970, § 8 (49 U.S.C. § 1612) [declares federal policy that mass transit systems be designed for access by handicapped]; see also 49 C.F.R. pt. 609 (1978) [regulations concerning access to mass transit systems receiving federal financial assistance].)

On a deeper level, finally, the stereotype is false because it fails to reach the heart of the parent-child relationship. Contemporary psychology confirms what wise families have perhaps always known—that the essence of parenting is not to be found in the harried rounds of daily carpooling endemic to modern suburban life, or even in the doggedly dutiful acts of "togetherness" committed every weekend by well-meaning fathers and mothers across America. Rather, its essence lies in the ethical, emotional, and intellectual guidance the parent gives to the child throughout his formative years, and often beyond. The source of this guidance is the adult's own experience of life; its motive power is parental love and concern for the child's well-being; and its teachings deal with such fundamental matters as the child's feelings about himself, his relationships with others, his system of values, his standards of conduct, and his goals and priorities in life. Even if it were true, as the court herein asserted, that William cannot do "anything" for his sons except "talk to them and teach them, be a tutor," that would not only be "enough"—contrary to the court's conclusion—it would be the most valuable service a parent can render. Yet his capacity to do so is entirely unrelated to his physical prowess: however limited his bodily strength may be, a handicapped parent is a whole person to the child who needs his affection, sympathy, and wisdom to deal with the problems of growing up. Indeed, in such matters his handicap may well be an asset: few can pass through the crucible of a severe physical disability without learning enduring lessons in patience and tolerance.

No expert testimony was necessary to establish these facts. As the Court of Appeal correctly observed in a somewhat different context, "It requires no detailed discussion to demonstrate that the support and, even more, the control of the child is primarily a mental function to which soundness of mind is a crucial prerequisite. It is also well known that physical handicaps generally have no adverse effect upon mental functions. . . . It is also a matter of common knowledge that many persons with physical handicaps have demonstrated their ability to adequately support and control their children and to give them the benefits of stability and security through love and attention." (*In re Eugene W.* (1972) 29 Cal.App.3d 623, 629–630, 105 Cal. Rptr. 736, 741, 742.)

[6] We agree, and conclude that a physical handicap that affects a parent's ability to participate with his children in purely physical activities is not a changed circumstance of sufficient relevance and materiality to render it either "essential or expedient" for their welfare that they be taken from his custody. This conclusion would be obvious if the handicap were heart dysfunction, emphysema, arthritis, hernia, or slipped disc; it should be no less obvious when it is the natural consequence of an impaired nervous system. Accordingly, pursuant to the authorities cited above the order changing the custody of the minor children herein from William to Ellen must be set aside as an abuse of discretion.

Both the state and federal governments now pursue the commendable goal of total integration of handicapped persons into the mainstream of society: the Legislature declares that "It is the policy of this state to encourage and enable disabled persons to participate fully in the social and economic life of the state . . . ." (Gov. Code, § 19230, subd. (a).) Thus far these efforts have focused primarily on such critical areas as employment, housing, education, transportation, and public access. (See, e. g., Welf. & Inst. Code, § 19000 [declares policy of rehabilitation for employment]; Gov. Code, § 11135 [bars discrimination against handicapped in state-funded programs]; *id.*, § 19230 et seq. [requires affirmative action programs for handicapped employment by state agencies]; *id.*, § 19702 [bars discrimination in state civil service]; Lab. Code, § 1420 [bars discrimination by private employers or labor unions]; *id.*, § 1735 [bars discrimination in employment on public works]; Civ. Code, §§ 54, 54.1

[guarantees access to public transportation, public accommodations, and rented housing]; Ed. Code, § 56700 et seq. [creates special educational programs for physically handicapped students]; Bus. & Prof. Code, § 125.6 [bars discrimination by holders of professional licenses]; Code Civ. Proc., §§ 198, subd. 2, 205, subd. (b) [declares handicapped competent to serve as jurors].)[11] No less important to this policy is the integration of the handicapped into the responsibilities and satisfactions of family life, cornerstone of our social system. Yet as more and more physically disabled persons marry and bear or adopt children—or, as in the case at bar, previously nonhandicapped parents become disabled through accident or illness—custody disputes similar to that now before us may well recur. In discharging their admittedly difficult duty in such proceedings, the trial courts must avoid impairing or defeating the foregoing public policy. With the assistance of the considerations discussed herein, we are confident of their ability to do so.

Lastly, we recognize that during the pendency of this appeal, additional circumstances bearing on the best interests of the children herein may have developed. Any such circumstances may, of course, be considered by the trial court on remand. (See *In re Marriage of Russo* (1971) supra, 21 Cal.App.3d 72, 93-94, 98 Cal.Rptr. 501.)

The portion of the interlocutory decree of dissolution transferring custody of appellant's minor children to respondent is reversed.

BIRD, C. J., and TOBRINER, CLARK, RICHARDSON, MANUEL, and NEWMAN, JJ., concur.

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[11] Again Congress has enacted similar legislation. (See, e. g., 5 U.S.C. § 7153 [authorizes rules to prohibit discrimination against handicapped by federal agencies and federal civil service]; 20 U.S.C. § 1401 et seq. [promotes education of handicapped children]; Rehabilitation Act of 1973, § 501 (29 U.S.C. § 791) [requires affirmative action programs by federal agencies]; *id.*, § 503 (29 U.S.C. § 793) [requires affirmative action programs by employers who contract with federal government]; *id.*, § 504 (29 U.S.C. § 794) [bars discrimination against handicapped in federally funded programs]; see also 45 C.F.R. pt. 84 (1978) [regulations implementing 29 U.S.C. § 794].)

On these and related topics, see generally *Symposium on Employment Rights of the Handicapped* (1978) 27 DePaul L.Rev. 943-1167; *Symposium on the Rights of the Handicapped* (1977) 50 Temple L.Q. 941-1034, 1067-1085; Jackson, *Affirmative Action for the Handicapped and Veterans: Interpretative and Operational Guidelines* (1978) 29 Lab.L.J. 107.

*Exhibit No. 2*

## SECTION 504

## REGULATION STATUS

Have published final regulations:

Health and Human Services (HHS); Education Department; Small Business Administration (SBA); Department of Transportation (DOT); Action; National Aeronautics and Space Administration (NASA); National Endowment for the Arts (NEA); Nuclear Regulatory Commission (NRC); Tennessee Valley Authority (TVA); Department of Justice (DOJ); Legal Services Corporation (LSC).

Have received final review letters:

National Science Foundation (NSF); Veterans Administration (VA); Department of Energy (DOE); Office of Personnel Management (OPM); Revenue Sharing; State Department.

Awaiting final review letters:

National Endowment for the Humanities (NEH); Agency for International Development (AID).

Have published proposed rules:

Community Services Administration (CSA); Department of Agriculture (DOA); Housing and Urban Development (HUD); Water Resources Council (WRC); Commerce; Civil Aeronautics Board (CAB); Federal Home Loan Bank Board (FHLBB); General Services Administration (GSA); Department of Defense (DOD); Department of Labor (DOL); Equal ^ Opportunity Commission (EEOC); Department of the Interior.

Employment

Have not published proposed rules:

International Communications Agency; Environmental Protection Agency(EPA).

6/20/80

*Exhibit No. 3*

American Telephone & Telegraph Company
Human Resources
295 North Maple Avenue
Basking Ridge, New Jersey 07920

# BELL SYSTEM MODEL AFFIRMATIVE ACTION PROGRAM
## for Handicapped Individuals, Disabled Veterans, and Veterans of the Vietnam Era

[ ] Denotes Change

March 1979 Revision

NOTE: This program has been written as a model to be used by the Bell System Companies in writing their own affirmative action programs to employ and advance qualified handicapped individuals, disabled veterans and veterans of the Vietnam era without unlawful discrimination. It is designed primarily as a guide for the corporate document.

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The __________ Telephone & Telegraph Company
(Corporate Address)

**POLICY STATEMENT**

It is the policy of The __________________ Telephone and Telegraph Company, consistent with other equal employment responsibilities, to provide equal employment opportunity to handicapped individuals, disabled veterans and veterans of the Vietnam era who are qualified for jobs which are within their capabilities to perform in a manner safe to themselves, their co-workers, the general public and consistent with efficient operation of the business.

This document represents the Company's commitment to a policy of providing equal employment opportunity for the handicapped, disabled veterans and veterans of the Vietnam era in all aspects of the employer-employee relationship. This includes recruiting, administering job listing requirements, hiring, transfers, upgrades and promotions, conditions and privileges of employment, Company sponsored training, educational assistance, social and recreational programs, compensation, benefits, discipline, layoffs, recalls, and termination of employment without unlawful discrimination because of physical or mental handicaps or disabilities.

The __________ Telephone and Telegraph Company pledges itself to a program of affirmative action aimed at assuring equality of employment and providing reasonable accommodations to the physical and mental limitations of job applicants and employees. No individual will be unlawfully discriminated against because of a physical or mental handicap or disability. All employment and advancement decisions will be based solely upon the objective determination of each candidate's job qualifications.

____________________________
President

____________________________
Vice President - Human Resources

____________________
Date

____________________________
Assistant Vice President -
Human Resources

## I. INTRODUCTION

This document is The __________ Telephone and Telegraph Company's Affirmative Action Program developed to comply with the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974, subsequent amendments and regulations issued respective to the Acts.* It describes the policy, practices and procedures implemented in employing and advancing, at all levels of management and non-management, qualified handicapped persons, disabled veterans, and veterans of the Vietnam era without unlawful discrimination.

Employees and applicants may review this Program upon request. All employees and applicants who believe they are covered under the provision of the Acts are invited to identify themselves, if they so desire. Such information is voluntary, and will be kept confidential, to the extent provided for by the Acts. Failure to identify themselves or to respond to inquiries regarding a handicap, disability or veteran status (1) will not result in adverse treatment and (2) will not relieve the Company of its obligation to take affirmative action with respect to those applicants and employees of whose handicaps the Company has actual knowledge.

The __________ Telephone and Telegraph Company will take appropriate action to insure that the right of individuals to file complaints, furnish information, or participate in an investigation, compliance review, hearing, or any other activity related to the administration of the Rehabilitation Act of 1973 and the Vietnam Era Veteran's Readjustment Assistance Act of 1974, will be respected and not interfered with in any manner.

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*NOTE: If state or local regulations require a written affirmative action program include mention of such regulations in this section.

"VETERAN OF THE VIETNAM ERA" means a person (1) who (i) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964 and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty for a service connected disability of any part of such active duty was performed between August 5, 1964 and May 7, 1975, and (2) who was so discharged or released within 48 months preceding the alleged violation of the Act, the affirmative action clause, and/or the regulations issued pursuant to the Act.

"48 MONTHS LIMITATIONS" - The Vietnam era officially ended May 7, 1975; nevertheless, employers are obligated for 48 months after the date of discharge, to take affirmative action to employ and advance qualified Vietnam era veterans who received, or were released with, other than a dishonorable discharge. For example, Vietnam era veterans released or discharged in 1990 with other than a dishonorable discharge, would be covered by the Affirmative Action provision under Section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974, for 48 months after they are discharged.

Individuals who are released from active duty for a service-connected disability are entitled to affirmative action under the Vietnam Era Veteran's Readjustment Assistance Act of 1974 as disabled veterans and the 48 months limitation does not apply.

### 2. Vice President and General Counsel

The Vice President and General Counsel is responsible for informing the Human Resources organization about local, state and federal regulations affecting the employment of qualified handicapped individuals, disabled veterans, and Vietnam era veterans. This individual advises the Vice President - Human Resources regarding the steps that must be taken to ensure compliance.

### 3. Vice President - Staff

The Vice President - Staff is responsible for reasonable accommodation to handicaps in plans for new construction, modification of existing buildings, requesting and negotiating for modifications of leased and rented quarters. Reasonable accommodations to individual handicaps are coordinated with the local management and Human Resources representatives as appropriate. Documentation is maintained of all accommodation decisions.

### 4. Vice President - Public Relations

The Vice President - Public Relations is responsible for disseminating the Company's affirmative action and equal employment policies to employ and advance qualified handicapped individuals, disabled veterans, and Vietnam era veterans without unlawful discrimination, periodically and properly through internal and external media.

## B. Operations

The Executive Vice Presidents are responsible for the Company's affirmative action efforts within their respective organizations, to employ and advance qualified handicapped individuals, disabled veterans and Vietnam era veterans without unlawful discrimination, and for providing reasonable accomodations to handicaps when appropriate.

For administrative purposes, these officers delegate this responsibility to the Vice Presidents reporting to them.

### [illegible]. All Vice Presidents

All Vice Presidents are responsible for ensuring that the Company's affirmative action efforts are achieved within their organizations. Each management employee, at every level of the organization, is evaluated on affirmative action performance just as certainly as he or she is held accountable for service, profits, community and employee relations.

Revised 3/79

10. Highlighted in Company publications through articles on the accomplishment of handicapped and disabled employees.

11. Further projected by including handicapped and disabled employees when feasible in handbooks and other publications when employees are featured.

12. Posted on Company bulletin boards.

13. Covered in depth with all employees working in employment related jobs. These include management and non-management employees in employment, placement, training and transfer processing. They receive training on applicable local, state and federal E.E.O. laws. Their responsibilities under these regulations are clearly outlined.

B. External Policy Dissemination

The Company also communicates its policy for hiring and advancing qualified handicapped individuals, disabled veterans and veterans of the Vietnam era, without unlawful discrimination, to outside sources by:

1. Enlisting the assistance and support of recruitment sources such as the State Employment Services, State vocational rehabilitiation agencies or facilities, sheltered workshops, college placement officers, veterans' counselors',state education agencies, labor organizations, and social and veteran's service organizations. The sources are requested to actively recruit and refer handicapped individuals, disabled veterans and veterans of the Vietnam era as job candidates for positions in the Company depending upon the availability of job openings.

2. Informing other major recruiting sources of efforts to actively recruit and employ the handicapped, disabled veterans and veterans of the Vietnam era without unlawful discrimination.

3. Advertising in appropriate media to indicate the Company's commitment to non-discrimination and affirmative action.

4. Featuring handicapped and disabled people in Company product and services advertising.

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## V. PLAN OF ACTION

The ________________________________ Telephone and Telegraph Company consistent with its other equal employment opportunity responsibilities and business needs, undertakes the development of reasonable internal procedures to ensure that its obligations to engage in affirmative action to recruit, and employ qualified handicapped individuals, disabled veterans and Vietnam era veterans, without unlawful discrimination, are being implemented and to ensure them equal opportunity for promotions to jobs for which they qualify.

### A. Internal Communications

1. Internal communication of the Company's obligation and commitment to engage in affirmative action efforts to employ and advance qualified handicapped individuals, disabled veterans and veterans of the Vietnam era in such a manner as to foster understanding, acceptance and support among the Company's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the Company in meeting this obligation.

2. Periodically inform all employees of the Company's commitment to engage in affirmative action to increase employment and advancement opportunities for qualified handicapped individuals, disabled veterans and veterans of the Vietnam era without unlawful discrimination.

### B. Recruiting

The ________________________________ Telephone and Telegraph Company shall undertake appropriate outreach and positive [recruitment activities. Projected vacancies for regular and temporary entry level jobs under $25,000 are listed with the State Employment Service. The required quarterly reports listing veterans hires are also filed with the State Employment Service.]

The kinds and extent of recruiting may depend upon the number of projected and actual job vacancies. Following are some of the recruiting efforts the Company will engage in when appropriate:

- Enlisting the assistance and support of recruitment sources, such as the State Employment Services, State vocational rehabilitation agencies or facilities, sheltered workshops, college placement officers, State education agencies, labor organizations, and social service organizations serving handicapped individuals, for the Company's commitment to provide meaningful employment opportunities to qualified handicapped individuals.

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to perform a job, with reasonable accommodations if appropriate.

3. Training and Advancement

All employees including those who are handicapped, disabled veterans and veterans of the Vietnam era are given equal access to developmental training courses. All movement and promotional decisions are based solely upon the objective determination of each candidate's qualifications, without unlawful discrimination because of a handicap, disability or veteran status. When necessary, reasonable accommodations are made for handicapped or disabled employees assuming new job responsibilities.

Counseling is provided to assist employees in examining their career interest, skills and opportunities available within the Company.

4. Functional Job Requirements

Functional requirements for jobs are reviewed and revised to ensure that they contain only job related criteria, are consistent with business necessity and the safe performance of the jobs.

5. Educational Assistance Programs

All employees are informed of Company sponsored educational assistance programs and how they may avail themselves of their benefits.

D. Voluntary Self-Identification

1. Applicants

The Company's employment application form contains a section informing applicants of the federal regulations' provisions for voluntary self identification by handicapped persons, disabled veterans and Vietnam era veterans. Applicants may also advise the Company of special skills they posses and of accommodations needed to perform a job properly and safely.

2. Employees

All active employees have been informed of the Company's Affirmative Action Program and of their right to voluntarily identify themselves as handicapped, a disabled veteran and/or a Vietnam era veteran, if they elect to be covered by the provisions of the Program.

3. Accommodations - Outside Agencies

- The assistance and technical advice of social service agencies of and for the treatment and rehabilitation of handicapped or disabled individuals is sought when exploring the feasibility of providing accommodations.

- State and local agencies are contacted to determine if they can assist with accommodations i.e., providing municipal parking facilities for the handicapped; curb and pavement renovation of areas presenting problems to employees or applicants with mobility limitations; providing special equipment etc.

F. Confidentiality

Applicants and employees are assured that all information regarding a handicap or disability shall be kept confidential except that (1) supervisors and managers may be informed regarding restrictions on the work or duties of handicapped employees and regarding accommodations; (2) first aid and safety personnel may be informed, where and to the extent appropriate, if the condition might require emergency treatment; and (3) government officials investigating compliance with the Act shall be informed.

All employees with responsibilities which may require knowledge of handicaps or disabilities are advised that they are to treat the knowledge with confidentiality.

G. Compliance

Internal monitoring procedures are followed to ensure compliance with federal, state and local regulations.

This Affirmative Action Program is reviewed annually and updated as necessary. Other Company policy, practices and procedures are also reviewed and updated to ensure compliance with government regulations.

H. Records*

Records are maintained regarding the application, employment, advancement and transfer of handicapped persons, disabled veterans and veterans of the Vietnam era. There and all records of complaints, compliance reviews and other required reports are maintained for one year.

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*NOTE: It is recommended that the past and current years records be maintained with a summary of previous years' activities. The recommendation of your Corporate Legal Department should be obtained for the retention period for complaint documentation.

C. Employees' Rights to File Complaints of Alleged Discrimination

Employees who believe the __________ Telephone and Telegraph Company has violated its obligations under government regulations may file complaints either with the Company or the Department of Labor by:

- contacting the Complaint Handlers for their Organization (indicate where telephone numbers and locations are listed). The matter will immediately be pursued in keeping with the Company's internal review procedure,

or by

- filing written complaints with the Department of Labor. Information on filing complaints with the government. is posted at work locations. Complaints alleging a violation of the Rehabilitation Act of 1973 are referred back to the Company. Employers are allowed 60 days to attempt to resolve such complaints through their internal complaint review procedure.

Revised 3/79

Exhibit #1 – (2)

# equal opportunity policy

It is the policy of the ____________ Telephone and Telegraph Company to hire and promote qualified people to perform the many tasks necessary in providing high quality telephone service at reasonable costs. An integral part of this policy is to provide equal employment opportunities for all persons for employment — to recruit and administer hiring practices, to provide working conditions, benefits and privileges of employment, compensation, training, appointments for advancement, including upgrades, promotions, transfers and terminations — without unlawful discrimination because of race, color, religion, national origin, sex, age, mental or physical handicap or towards disabled veterans or veterans of the Vietnam era. It is the intention of the Company to adhere to both the letter and spirit of government regulations requiring a course of affirmative action to fulfill its equal employment obligations. Any person who believes the Telephone and Telegraph Company has failed to meet its EEO obligations as required by law may file a charge of alleged discrimination with an appropriate government agency, or bring the matter to the attention of the Company by calling ________________ on ____________.

(title or name) (area code & tel. no.)

The ____________ Telephone and Telegraph Company will take appropriate action to ensure that the rights of individuals to file complaints, furnish information or participate in investigations, compliance reviews or other activities relating to the administration of equal employment regulations will be respected and not interfered with in any manner.

____________________

President

____________________

Date

Exhibit #2 – (1)

TO ALL EMPLOYEES:

In a continuing effort to treat qualified handicapped individuals and disabled and Vietnam era veterans without discrimination in employment, training, job placement, advancement opportunities, and other terms and conditions of employment, the ______________ Telephone Company, as a federal contractor, reaffirms its commitment to the principles of equal employment opportunity for all employees and applicants for employment and its commitment to applicable provisions of the Rehabilitation Act of 1973 and the Veterans Readjustment Assistance Act of 1974 and to the regulations issued respectively under each Act.

Both Acts require that a federal contractor prepare and maintain an affirmative action program, which we have, for applicants and employees covered by such Acts and invite applicants and employees who believe themselves to be covered under the Acts to identify themselves to the contractor if they so desire. Such information is voluntary and will be kept confidential, except to the extent provided for in the Acts. Refusal to supply the information will not subject a person to any adverse treatment.

Federal regulations define a handicapped person as one "who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a history of such impairment, or (3) is regarded as having such an impairment."

Federal regulations define a disabled veteran as "a person entitled to disability compensation under laws administered by the Veterans Administration for disability rated at 30% or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty."

A veteran of the Vietnam era is defined as "a person (1) who, (i) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964 and May 7, 1975, and was discharged or released with other than a dishonorable discharge, or (ii) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975, and (2) who was discharged or released within 48 months preceding an alleged violation of the Act, and/or regulations issued pursuant to the Act."

If you feel that you qualify as a handicapped individual, disabled veteran, or veteran of the Vietnam era using any of the above definitions, you may, if you wish, so identify yourself to the Company using the attached form.

Exhibit #2–(3)

Name: ____________________ Social Security # ______________

Work Assignment/Title: ______________________________

Work Location: ____________________

____________________

Work Location Telephone Number: ______________

Circle appropriate clasification(s)

Handicapped     Vietnam era Veteran     Disabled Veteran

Date of Discharge __________

If handicapped or disabled, nature of disability:

______________________________________________

______________________________________________

Has an accommodation been made to aid you in performing your job? Yes No

Do you feel that an accommodation would aid you in performing your job better? Yes No

If yes, please describe such accommodation:

______________________________________________

______________________________________________

______________________________________________

*Exhibit No. 4*

Education U.S.A., May 5, 1980

LEGAL UPDATE OF CASES FILED UNDER THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT - P.L. 94-142

INSERT ON LINE 12 AT PAGE 135 OF THE TRANSCRIPT DATED TUESDAY, MAY 13, 1980

## Legal Update

NOTICE: This material may be protected by copyright law (Title 17 U.S. Code)

# PL 94-142 AND THE COURTS—SO FAR

• The Education for All Handicapped Children Act--PL 94-142--mostly sets up machinery for channeling federal money to the states. But two of its requirements have given the parents of handicapped students considerable leverage against the schools.

To qualify for money under the act, a state must provide "a free appropriate public education...for all handicapped children...." § 1412(2)(B). And § 1415, "Procedural Safeguards," requires an elaborate sequence of notices, hearings and reviews whenever the school proposes (or refuses) to evaluate a child or to make any changes in his or her program.

By far, the most litigation has come from parents protesting their handicapped children's suspension or expulsion. The leading case is *Stuart v. Nappi*, 443 F. Supp. 1235 (1978). Kathy Stuart, not her real name, was a Connecticut high school student with learning problems. Though assigned to special classes, she instead spent much of her time wandering in the corridors. Kathy took part in school-wide disturbances, and the school tried to expel her on disciplinary grounds. Her mother sought an injunction, arguing that an expulsion would deny Kathy the appropriate public education to which 94-142 entitled her.

The federal district court agreed: "The right to an education in the least restrictive environment may be circumvented if schools are permitted to expel handicapped children." Moreover, said the court, any change in Kathy's placement must go through the full set of procedures detailed in § 1415. A straightforward, disciplinary expulsion is not possible when the student is handicapped.

### A Less Stringent Approach

The Supreme Court of Iowa, the only state court to report on the issue so far, gives its schools more leeway. There, the schools may expel a handicapped student--but they must do it according to § 1415, even where the grounds are disciplinary. (*Southeast Warren Community School District v. Department of Public Instruction*, 285 N.W.2d 173 (1979)).

An Indiana federal court tried for an intermediate position in *Doe v. Koger*, 480 F. Supp. 225 (1979), asking whether the grounds for expulsion and the handicap are related. "[The act] only prohibits the expulsion of handicapped students who are disruptive because of their handicap," said the court. "If the reason is not the handicap, the child can be expelled." But there is a catch. The court reasoned that a child who disrupts because of his handicap must not have been appropriately placed--so only children who are first appropriately placed may be expelled.

The school's reason for wanting the student out makes no difference. In New York State, a 13-year-old was hospitalized with self-inflicted injuries due to an emotional disorder. Her school, lacking the proper supervisory staff, felt it had to suspend her for her own protection. But while conceding the school's right to an emergency suspension, the federal district court still required the school to provide her with an appropriate education regardless of expense. (*Sherry v. New York State Education Department*, 479 F. Supp. 1328 (1979)).

In an interesting twist, the parent in *Mrs. A.J. v. Special School District No. 1*, 478 F. Supp. 418 (1979), tried to prevent her daughter's suspension by claiming the girl was handicapped. But the act cuts both ways, ruled the court; until the student is found to be handicapped under the same § 1415, she cannot hold the school to those requirements.

### A Longer School Year

Another issue, and a potentially expensive one, springs from a federal ruling in Pennsylvania: that state's usual 180 days of schooling a year may be [illegible] er than is "appropriate" for some handicapped children. In Armstrong v. Kline, 476 F. Supp. 583 (1979), parents of five severely handicapped students claimed that breaks in schooling caused their children to regress, seriously impeding their progress toward self-sufficiency. The act itself does not mention number of days in school; but its legislative history does put a strong emphasis on education for self-sufficiency. The court said the 180-day rule deprived those students of an appropriate education, and the Pennsylvania schools must provide more time as necessary.

Armstrong v. Kline was a class action suit, so the ruling potentially applies to many more children than were in court. But the court declined to lay down guidelines as to just which students were entitled to more than 180 days, leaving those decisions to the people most familiar with the children involved. Oregon has similarly set aside its 175-day rule in a state court proceeding, Mahoney v. Administrative School District No. 1, 601 P.2d 826 (1979). Though not a class action suit, this decision by an appeals court will have state-wide influence. Other states may well follow suit.

### Identification Problems

As in almost every other aspect of school administration, the identification of handicapped children opens the possibility of discrimination. Lora v. Board of Education 456 F. Supp. 1211 (1975) was a class action brought on behalf of all minority students assigned to the "special day schools" in New York City. The suit alleged that 68% of the students in those classes were black, and 27% Hispanic; and that white children with the same handicaps were better treated.

In a long and careful opinion, the federal district court conceded the school system's benign motives, but pointed to a then-current rule that there is discriminatory intent when actions have "the natural, probable, and foreseeable result of increasing or perpetuating segregation." Yet the court did not seek immediately to redress the ratios of minority children in the special classes. Instead, it simply held the city to the detailed procedures of § 1415--and insisted particularly that the notices to parents imposed by the act be clear, understandable, and in a language the parents can understand. Rather than try to solve a complicated problem at a stroke, the court sought to ensure that parents, minority or otherwise, had access to their full rights under the act to protest their children's placement, when protest was called for.

### No Money, No Excuse

Though New York City was then in a financial crisis, the court ruled its monetary problems did not excuse noncompliance with the act. This language has been cited with approval in other jurisdictions. Cities may not, it appears, relegate handicapped students to second priority when the money runs short.

Issues arise in many of these cases over when parents can bring suit, and the relief they can obtain. According to the statute, a parent must exhaust the procedural steps in § 1415 before suing. Defending schools usually point to steps omitted. But the courts are evolving allowing parents to omit procedures likely to be futile (Loughran v. Flanders, 470 F. Supp. 110 (1979)), thus expediting court action. And the parents have usually won. Most often the outcome is an injunction, though parents can also seek repayment for private care not provided by the school. (Boxall v. Sequoia Union High School District, 464 F. Supp. 1104 (1979)). The act does not, however, entitle parents or children to money damages for negligence, even when a school fails to meet the requirements, Loughran v. Flanders, above.

The courts, on the whole, have taken the position that 94-142 means pretty much what it says. School administrators, therefore, should be thoroughly familiar with the act, and especially with the due process procedures under § 1415.

APPENDIX B - REFERENCE at p. 135, Vol. I

PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED
WASHINGTON, D.C. 20210

STATEMENT SUBMITTED
~~TESTIMONY PRESENTED~~ TO THE
U.S. COMMISSION ON CIVIL RIGHTS
"CIVIL RIGHTS ISSUES OF HANDICAPPED AMERICANS"
BY PAUL HIPPOLITUS

Equal opportunity in our society should begin with equal opportunity in education. What happens or does not happen in the education setting for individuals of a protected class or minority will, in most instances, determine the potential these individuals will possess to fully participate in all phases of American life -- especially employment. Equality in education can be viewed as the foundation for civil rights and the key to equal employment opportunities.

The situation faced by disabled people is true to this premise. In the main, disabled people are being denied an equal opportunity in education. They are unfairly excluded from those opportunities in education which help to establish an individual's potential for future employment. In addition, they are often being served with specialized education and training programs which fail to appropriately prepare them for the world of work. As a result, disabled people are not being adequately prepared to take-up the employment opportunities that civil rights legislation guarantees for them.

To illustrate this deprivation of opportunity one only has to consider some of the statistics which are available. Approximately 2% of all vocational education students are disabled. It should be around 10%. Approximately 2% of all college freshmen are disabled. It should be around 10%. Approximately 3% of all CETA trainees are disabled. It should be about 10%. And, the drop-out rate for handicapped adolescents during the secondary years has been found to be about 5 to 6 times higher than the normal drop-out rate.

The purpose of this testimony is to review, in a very cursory manner, some of the major discriminatory practices which exist in education and impact on disabled people. These discriminatory practices have the effect of unfairly denying handicapped children, youth and adults both an equal education and, in turn, an equal opportunity to future employment. This testimony is primarily concerned with those education and training programs which are designed for the general public, and mandated to serve disabled individuals. These include secondary education programs, vocational education, adult education, higher education and CETA.

Discrimination against handicapped individuals in education can be said to begin in the minds of the teachers and administrators of education programs. Their mind-set or attitudes reflect the longstanding societal notion that a handicapped person is incapable of performance.

The potentials of disabled people in both education and, in turn, employment are underestimated. As a consequence of this misconception, many unfair actions are taken by the education community which are benignly viewed, but are blantantly discriminatory. Unfortunately, they often go unnoticed and unchallenged because the world culture has forever envisioned disabled people in an unequal light.

Fortunately, during the last generation, we have begun to fully realize and test the potentials of disabled people. And, what we have learned from this testing is that, once we identify and remove certain barriers, most disabled people are no longer at a disadvantage. They can perform alongside all others. As for those severely handicapped people who cannot achieve this level of success, we have learned that they can far exceed our traditional expectations for them when we provide them with appropriate services. The point is, in order to fully understand the civil rights dilemma facing disabled people, we must first recognize the attitudinal barriers which produce the physical and programmatic barriers confronting disabled people. That means we must begin our efforts in this area by clearly defining the reality that the denial of equal and appropriate educational opportunities for disabled people is a civil rights issue. This can and must be done immediately! It can be done by insuring that handicapped people receive equal billing whenever listing protected classes and minorities. It can be done by publishing civil rights literature that addresses the civil rights needs of disabled people. It can be done by continuing to hold forums such as the one held by ~~your agency~~ the U.S. Commission on Civil Rights on May 13 and 14, 1980.

Once we clearly establish the problem facing disabled people in education as a civil rights issue, we can more effectively challenge the individual barriers which cause this to be. What follows is a listing of these individual barriers.

The first area deserving of attention relates to the allocation and utilization of financial resources which are capable of benefiting handicapped individuals in education programs. This topic reflects, to a large degree, the longstanding approach to program development which considers the educational needs of handicapped persons in a segregated fashion.

While civil rights' mandates clearly establish the right of handicapped concerns to be integrated into the planning and budgets of regular programming functions, many jurisdictions continue to spend their regular budgets as they always have, and lastly address the needs of handicapped persons. Consequently, we continue to hear the "cop-out" which pleads poverty. They say to parents and others, "We can't afford to mount a program or service for handicapped individuals." "We don't have any money for that!"

We need to be investigating these situations to determine if there is a fair sharing of this "poverty"among all segments being served. We suspect that educational programs for handicapped people are one of the first areas to be cut.

An allied finanical concern which warrants close and immediate scrutiny is the federal level policy which allows local vocational education program operators to finance the entire cost of segregated vocational education programs for handicapped students with federal and state set aside monies. This practice has the effect of denying these handicapped students equal benefit from the local tax base. In Addition, this practice encourages the segregation of handicapped students in separate programs. This policy must be studied.

The next area worthy of investigation relates to the existing admissions and testing practices of programs in education. In most instances, education programs such as vocational education, adult education, and higher education require candidates for admission~~s~~ to pass certain tests or meet certain admission~~s~~ criteria. Many of the tests given are purported to measure potential for success in the program. Unfortunately, most of these tests have been "normed" or designed for nonhandicapped populations. Often the result is a low or failing score for the handicapped student. The reason for this failure and, as a consequence, denial of admission is not a low potential for success. Rather, it's directly attributable to the unfair aspects of the test~~s~~ construction or admission's criterion. In short, it has discriminated on the basis of handicapping condition. This phenomenon needs to be investigated.

Another barrier facing disabled people in education is in the failure to identify handicapped individuals who are in need of services, and the failure to identify students who have special and additional needs. Both of these system failures have the effect of discrimination.

The former situation, the identification of and outreach to totally unserved handicapped individuals who are eligible for services, is a requirement of all public education programs. In elementary education this effort has been termed "child find." Basically, it's a searching-out process in the community for handicapped individuals who are in need of publicly mandated education programs and who are not currently receiving any such services. While we have made significant advances in the area of identifying handicapped young children who are in this situation, we have generally failed to be equally as aggressive in finding and serving handicapped secondary youth and young adults who are very much in need of similarly mandated services. The negligence with this population is directly attributable to a federal-level lack of emphasis on this point and the lack of suitable programs in which to place these individuals. Neither reason is sufficient to excuse this neglect, however. This situation warrants our attention.

The other "identification" civil rights issue is concerned with those handicapped students who are currently involved in various regular education programs, but who have not been either identified as being handicapped or are not being served as such.

In both situations the student's needs are, simply, being ignored. Clearly, there is an obligation to the civil rights of these disabled individuals to identify their needs for additional support services; and, in turn, to provide for those needs. Unfortunately, some state and local education administrators have come to the realization that if they discourage the further identification of disabled students who are on their existing rolls, they save money. They reason that if they don't find them and identify their special needs, then they don't have to spend money to mount the support services which are legally required. The reality is, in too many cases, these ignored students are failing in the classroom without this assistance; and, as a result, are exhibiting antipersonal and antisocial behaviors which are fanned by ~~they~~ their academic failure. These individuals are, in effect, having their civil rights violated as a result of this practice and our society is suffering a needless corrupting of its talent.

The next problem area appropriate for civil rights-oriented attention relates directly to the attitudinal mind set which permeates the education community with respect to the potentials disabled people possess. This is the stereotyping that exists in counseling and placement decisions for disabled students.

Legislative mandates make clear the discriminatory aspects of those placement decisions which are based on the educational program operator's understanding of the career potential for a specific category of disability. Where this practice is most noticeable is in education and training programs that prepare people for careers where, historically, very few disabled people have been placed.

As a consequence of their absence, program operators assume that all disabled individuals can't perform in these occupations. Therefore, they make this sufficient cause to deny access to the related training program. This discriminatory practice must stopped.

One more area which needs to be addressed involves the unfair situation created when related public agencies, ~~who~~ all which share a measure of responsibility to disabled individuals, work in isolation. The need created by this unfairness is called "interagency cooperation[6]." In secondary education, for example, we should expect three or more agencies to be working together for the benefit of disabled youth. These agencies should include; special education, vocational education and vocational rehabilitation. Still more locally based public agencies have the potential to contribute to the development of appropriate educational services to disabled youth. These other agencies might include; social services, CETA, and Employment Security or Job Service.

Unfortunately, however, the reality is that practically none of these agencies cooperates effectively with the others in situations where the disabled student will need a coordinated delivery of related services.

The predicament created, which is tantamount to a civil rights issue, is the shortsightedness which each agency regards the subject of service to disabled individuals. There exists, for reasons ~~of~~ either covetousness or accountability, a reluctance to coordinate the varied offerings or related public agencies for the maximum benefit of disabled people. In situations where the agencies involved are designed to exclusively serve disabled people the motivation for this reluctance results from a covetousness. These specialized agencies guard their disabled clients or students from the view of each other and other related service agencies. They do this in an effort to protect their domain.

In situations where the agencies involved are designed to serve the general population, the motivation for this reluctance to work with other agencies for the benefit of handicapped people is accountability. These regular service agencies, such as regular education, CETA, vocational education, job service, etc., have established a criterion for accountability which fails to include responsibility for serving handicapped populations. In other words, disabled people are thought to belong to the other specialized agencies. This myth is reinforced by the covetousness displayed by the specialized agencies.

The loser in this organizational perversion is the disabled person. The result is a denial of publicly supported services to disabled people in a coordinated fashion. Instead, disabled people are unfairly denied the full range of programming options and array of public services which should be available to meet their full range of educational and job preparation needs.

Other important civil rights issues in need of examination are: 1.) the lack of appropriate representation of disabled people on advisory councils serving education and training programs; 2.) the failure to construct new education buildings in a barrier free manner; 3.) failure to consult with handicapped people when developing remedial action plans called for in federal legislation; 4.) failure to employ disabled individuals in education and training positions; 5.) failure to provide access to nonacademic services and extracurricular activities; and, 6.) the lack of equal access to financial assistance and scholarship programs.

We hope this brief treatment of civil rights issues facing disabled people in education has been of some assistance. We do not however, want to paint a totally negative picture. Many local areas and some states have risen to the challenge framed by the Congress and have made it all work. This is important to note because it tells us clearly that it can work. Disabled people can be served with equality in education. They must be.

If there were to be only a single contribution that the Commission on Civil Rights could make to this area, we would hope it would be to broadcast to the land the reality that equality in education for disabled people is, without a doubt, a civil rights issue. If this could be done, we would move the issues mentioned in this testimony out of the realm of charity and into the realm of civil rights.

Finally, we wish to express our willingness and eagerness to cooperate with the Commission as they move forward in this area in whatever way it would deem appropriate.

*Exhibit No. 5*

Prepared Statement of John McNeil,
Chief, Consumer Expenditures and
Health Statistics Division, Bureau of
the Census, Department of Commerce

As Leslie Milk has indicated, household surveys have a unique role to play in providing information about the number of persons who are disabled and their economic and social situation. There are other important sources of information such as program statistics and employer records, but surveys are our only method of learning about the characteristics of the entire population.

There has been a considerable amount of survey activity in the area of disability measurement during the past 15 years. The longest data series is that provided by the National Center for Health Statistic's Health Interview Survey. Questions about the presence of activity limitations and conditions causing limitations have been part of the ongoing Health Interview Survey since the early 1960's. Among other data, the survey collects information on the number of persons whose health limits the kind or amount of work they can do and the number prevented from working. The most comprehensive surveys relating to work disability have been those sponsored by the Social Security Administration. Very detailed surveys were conducted in 1966, 1972 and 1978. Besides asking an extended set of questions on the presence of limitations in the kind or amount of work a person could do, these surveys obtained information on the ability to do certain physical tasks, use of special aids, characteristics of present and previous jobs, receipt of and interest in receiving rehabilitation services, and various financial characteristics. Apart from these efforts, disability questions have also appeared in a number of multi-purpose surveys including the 1967 Survey of Economic Opportunity, the 1976 Survey of Income and Education, and the 1970 and 1980 censuses of population. The work disability questions which were asked in the 1970 and 1980 censuses were brief--only "is this person limited in the kind or amount of work he or she can do?" and, if a "yes" answer is received "is this person prevented from working?" The 1967 SEO and 1976 SIE asked somewhat more detailed questions about disability status: the SIE asked about the ability to work regularly and asked for the condition causing the limitation.

Although there is the recognition that a household survey is the only means of estimating the prevelance of disability within a population, survey designers and data users must be concerned about the validity and reliability of the data. Does the question about a limitation in the kind or amount of work a person can do successfully identify the population in which we have an interest? It seems obvious that there will be people at the margin who will have a difficult time indeciding whether they have a work limitation. Leslie Milk has mentioned one group who may fail to respond properly to the question. That would be those persons who fail to report themselves as work disabled because of the stigma attached to such a status. She has also suggested that some persons with a particular health history may quite properly answer "no" to the work limitation question, but, because of employer bias be subjected to very restricted job opportunities. A third possible problem, which has some significance among women who have never worked, is that persons who have never been in the labor force may answer the work limitation question "no" because they have never considered themselves to be potential workers.

One method of examining the validity of survey data on the work-disabled is to compare the status of the disabled with the nondisabled. I would like here to refer to certain data from the 1976 Survey of Income and Education, the most recent available survey data. According to that survey, 16.4 million persons between the ages of 18 and 64 had a work disability. Of these 16.4 million, 7.1 million were prevented from working and another 2.1 million were unable to work regularly. Work disability had a very strong impact on labor force participation and earnings and there was a strong negative relationship between work disability and years of school completed. Only 47 percent of work-disabled persons completed high school compared to 76 percent for persons without a work disability. The presence of a work disability affects earnings levels through three separate paths. First, it reduces the weeks and hours that a person is likely to work. Second, even for those persons who put in the same number of weeks and hours, work-disabled persons have less education and less education means lower earnings. Finally, even among those persons with the same education and the same number of weeks and hours worked, work-disabled persons have lower earnings than persons without a work disability. As an example of the extent to which a work disability reduces the earnings of males 18 to 64 years of age, we can again refer to the 1976 Survey of Income and Education. That survey showed that only 65 percent of work-disabled males had earnings in 1975 and only 34 worked year-round-full-time. The comparable figures for nondisabled males were 95 percent and 64 percent. Among males who had earnings in 1975, those who were work disabled had average earnings that were only 51 percent as high as those who were not disabled. Among full-time workers, those with a work disability earned only 83 percent of their nondisabled counterparts. Even among full-time workers with a college degree, the earnings of work-disabled males was 92 percent that those who were nondisabled.

There are other ways of evaluating the quality of survey data on disability status. One method is to go back to respondents a short time after an interview and ask the same or a similar set of questions. The degree of consistency between the original interview and the reinterview is an indication of the reliability of the data. The work that has been done in this area suggests that the reliability of the data depends importantly on the design of the survey and the questionnaire. In the 1976 National Content Test for the 1980 census, we tested a disability item that asked about disability status in several areas including work. A sub-sample of households was then reinterviewed. When we compared the original and reinterview responses, we found a distressing amount of inconsistency. For example, of the 455 persons who reported a work disability in the original survey, only 298 reported a work disability in the reinterview. One of our conclusions was that the disability item that we tested was too complicated for a mail questionnaire. This conclusion led us to adopt a shorter and more simple disability item for the 1980 census.

More recently we conducted a pretest of the proposed postcensus disability survey. Leslie has already referred to this survey which has been proposed for 1982. The proposed survey differs from earlier efforts primarily in its projected sample size in its coverage of persons 65 and over, and in its attempt to collect detailed information on the characteristics of persons who report a limitation in any one of number of areas including the ability to perform certain physical tasks, the ability to get around, the ability to care for oneself, the ability to see and hear, the ability to do work and housework and the ability to use public transportation. One of our early findings from the pretest and the pretest reinterview is that there was a very good agreement on work disability status. Of the 82 persons who reported a work disability in the original interview, 77 reported a work disability in the reinterview. A reasonable conclusion is that surveys which are designed to focus on the subject of disability can produce reliable information on the disability status of the population.

## *Exhibit No. 6*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### EQUAL EMPLOYMENT OPPORTUNITY

### MANAGEMENT DIRECTIVE

EEO-MD 703

DATE: December 6, 1979

**TO THE HEADS OF FEDERAL AGENCIES**

1. SUBJECT. INSTRUCTIONS FOR AFFIRMATIVE ACTION PROGRAM PLANS FOR HIRING, PLACEMENT, AND ADVANCEMENT OF HANDICAPPED INDIVIDUALS INCLUDING DISABLED VETERANS FOR FISCAL YEAR 1980

2. PURPOSE. This directive prescribes instructions to agencies for submission of 1979 reports of achievements and 1980 affirmative action program plans for hiring, placement, and advancement of handicapped individuals including disabled veterans.

3. AUTHORITY. These instructions are prepared pursuant to the Equal Employment Opportunity Commission's obligation and authority under Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791); Section 403 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 2014(c)); Reorganization Plan No. 1 of 1978 (issued pursuant to 5 U.S.C 901 et. seq.); and Executive Order 11478 (34 FR 12985, August 10, 1969), as amended by Executive Order 12106, issued under this plan (44 F.R. 1053, December 30, 1978).

4. POLICY INTENT. It is the intent of the Equal Employment Opportunity Commission to take a positive and directive role in assuring that Federal agencies fully comply with Section 501 of the Rehabilitation Act of 1973, as amended, and Section 403 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. It is the policy of the Federal Government to provide equal employment opportunity for persons with disabilities. All Federal agencies must take affirmative action to hire, place, and advance qualified handicapped individuals, including disabled veterans, and to retain Federal employees who become disabled after appointment.

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5. SCOPE. The provisions of this directive apply to all departments, agencies, and instrumentalities in the Executive Branch of Government, including the United States Postal Service, Postal Rate Commission, and units in the Government of the District of Columbia having positions in the competitive service.

6. RESPONSIBILITIES.

   a. Agency heads are responsible for prompt and effective compliance with these instructions within their organizations.

   b. The Equal Employment Opportunity Commission will approve or disapprove each agency affirmative action program plan, rate the accomplishments of each agency satisfactory or unsatisfactory, and communicate results of evaluation to each agency with instructions for submission of a revised plan if required.

7. POLICIES AND PROCEDURES.

   a. The 1979 reporting year has been extended to cover the period July 1, 1978, through August 31, 1979. Agencies are to submit statistics and reports of accomplishments.

   b. FY 1980 will be a transition year during which agencies are to continue to implement the objectives of their 1979 affirmative action program plans through September 30, 1980. As in the past, agencies are to assemble selective placement coordinator statistics and handicap and disabled veteran statistics for the agency work force.

   c. During the transition year, agencies are to focus their primary efforts as follows:

      (1) Place emphasis on employment of handicapped individuals with severe disabilities.

      ACTION: Analyze handicap data for the agency work force with special emphasis on selected disabilities. Data are to be reported by grade, type of occupation, and disability category for the following codes: 16 and 17 (deafness); 23 and 25 (blindness); 28 and 32-38 (missing extremities); 64-68 (partial paralysis); 71-78 (complete paralysis); 82 (convulsive disorders); 90 (mental retardation); 91 (mental illness); and 92 (distortion of limbs and/or spine). Codes are those used on Standard Form 256, a copy of which is attached (Exhibit 1). The disabilities specified have been selected on an experimental basis in an attempt to address statistical problems involved in affirmative action for handicapped individuals. (See paragraph 8c.)

(2) Give priority to increased hiring of handicapped individuals.

ACTION: Establish goals and timetables for hiring persons with the disabilities designated above during FY 1980. For the purpose of setting goals, the disabilities specified may be considered as a group. In establishing goals and timetables an agency may wish to consider its own past performance, the performance of agencies with exemplary records, overall government progress, and census data. (See paragraph 8c and Appendix A.)

ACTION: Implement a special recruitment program for handicapped individuals with the disabilities designated above, and describe results in terms of applications, nonselections, and hires. To the extent possible agencies are to adapt and apply the basic principles embodied in the Federal Equal Opportunity Recruitment Program. (See 44 F.R. 22029, April 13, 1979; 5 C.F.R. part 720. Also, see paragraph 8d.)

ACTION: Report accessions and losses of handicapped individuals with the disabilities designated during FY 1980. Data are to be reported by grade, type of occupation, disability category, education, and age. Specify by appointment: full-time, part-time, intermittent, excepted, career-conditional, career, etc. (See paragraph 8g.)

(3) Make agency facilities accessible to handicapped individuals.

ACTION: Survey facilities and establish goals and timetables for removal of barriers. (See paragraph 8e.)

ACTION: Report on facility accessibility. (See paragraph 8g.)

d. Agencies are to submit targeted plans for the FY 1980 transition year. These plans need only address the three target areas indicated above and must explain how objectives will be accomplished within each area.

e. During FY 1980 agencies are to analyze selection procedures in order to identify those that impede hiring, placement, and advancement of handicapped individuals. Principles set forth in the Uniform Guidelines on Employee Selection Procedures (1978) should be adapted and applied insofar as possible. (See 43 F.R. 38312, August 25, 1978; 29 C.F.R. part 1607.) As procedural barriers are identified, lists of alternatives should be prepared. (See paragraph 8f.)

8. REPORTING REQUIREMENTS. Agencies are to submit the following items to the Office of Government Employment, Equal Employment Opportunity Commission, on or before the dates indicated:

a. October 15, 1979 -- Agencies are to submit selective placement coordinator statistics and handicap and disabled veteran statistics for the agency work force. Data are to be reported as of December 31, 1978, using the attached format (Exhibit 2).

b. October 15, 1979 -- Agencies are to submit reports of accomplishments during the extended reporting year July 1, 1978, through August 31, 1979. The format for reporting these accomplishments is the same as in previous years and is described in Subchapter 11 of Chapter 306 of the Federal Personnel Manual.

c. February 1, 1980 -- Agencies are to submit a preliminary analysis of work force representation in the disability categories specified, along with goals and timetables for hiring persons with these disabilities during FY 1980.

d. February 1, 1980 -- Agencies are to submit a plan for implementing a special recruitment program for handicapped individuals with the disabilities specified in these instructions. This plan is to include assurances that necessary data will be reported and analyzed.

e. February 1, 1980 -- Agencies are to submit goals and timetables for removal of barriers in facilities surveyed.

f. April 1, 1980 -- Agencies are to submit a preliminary report identifying selection procedures that impede hiring, placement, and advancement of handicapped individuals and describing alternatives being considered or being implemented.

g. The reports of accomplishments required under targeted objectives for FY 1980 will be due in formats and on dates to be specified in the future.

h. Agency reports of FY 1980 accomplishments are to include an analysis of selection procedures and possible alternatives to those that impede employment of handicapped individuals. Format and submission date will be specified in the future.

9. APPENDICES. Attached are Standard Form 256, Self-Identification of Medical Disability; a statistical reporting format from Appendix C of Chapter 306 of the Federal Personnel Manual; an analysis of comments on draft instructions; and guidance for establishing goals and timetables for hiring persons with specified severe disabilities.

10. INQUIRIES. Further information concerning this directive may be obtained by contacting:

Office of Government Employment
Equal Employment Opportunity Commission
2401 E Street, N.W., Room 4208
Washington, D.C. 20506

Telephone: (202) 653-7638

Interagency Report Control Number:

This interagency report was cleared in accordance with FPMR 101-11.11. Reports required in paragraphs 8a and 8b are assigned interagency report control number 0023-CSC-AN. Reports required in paragraphs 8c through 8f are assigned interagency control number 0234-EEO-XX. Clearance for reports mentioned in paragraphs 8g and 8h will be requested in the future.

Preston David
Preston David
Executive Director

Exhibit 1

**Self-identification of Medical Disability** Attachment 1 to FPM LTR. 290 APPENDIX B

| | | |
|---|---|---|
| Last Name | Birth Date *(Mo./Yr.)* | Social Security Number |

ENTER CODE HERE ——→ ☐☐

**DEFINITION OF A REPORTABLE DISABILITY:** A physical or mental disability is NOT determined by a person's ability to perform his or her work but by a disability, or a history of such disability, which is likely to cause the employee to experience difficulty in obtaining, maintaining or advancing in employment. This does not apply solely to an employee's current position, but applies to the total career life cycle of that employee. *(In the case of multiple disabilities, choose the code which describes the impairment that would most likely result in such difficulties.)*

| GENERAL CODES | Code |
|---|---|
| I do not wish to have my disability status officially recorded outside my medical records. *(Before using this code, please read the reverse side of this form, which explains the need for obtaining this information. (Note your agency may use this code if, in their judgement you have used an incorrect code.))* | 01 |
| I have no disability of the types listed in the codes below | 04 |

| SPEECH IMPAIRMENTS | |
|---|---|
| Severe speech malfunction or inability to speak, hearing is normal. *(Examples: defects of articulation [unclear language sounds], stuttering, aphasia [impaired language function], laryngectomy [removal of the "voice box"])* | 13 |

| HEARING IMPAIRMENTS | Code | | |
|---|---|---|---|
| Hard of hearing *(Total deafness in one ear or inability to hear ordinary conversation, correctable with a hearing aid)* | 15 | Total deafness in both ears, with understandable speech | 16 |
| | | Total deafness in both ears, and unable to speak clearly | 17 |

| VISION IMPAIRMENTS | | | |
|---|---|---|---|
| Ability to read ordinary size print with glasses, but with loss of peripheral (side) vision *(Restriction of the visual field to the extent that mobility is affected - "Tunnel vision")* | 22 | Inability to read ordinary size print, not correctable by glasses *(can read oversized print or use assisting devices such as glass or projector modifier)* | 23 |
| | | Blind in one eye | 24 |
| | | Blind in both eyes *(No usable vision, but may have some light perception)* | 25 |

| MISSING EXTREMITIES | Code | | | | |
|---|---|---|---|---|---|
| One hand | 27 | One leg | 32 | One hand or arm and one foot or leg | 35 |
| One arm | 28 | Both hands or arms | 33 | One hand or arm and both feet or legs | 36 |
| One foot | 29 | Both feet or legs | 34 | Both hands or arms and one foot or leg | 37 |
| | | | | Both hands or arms and both feet or legs | 38 |

| NONPARALYTIC ORTHOPEDIC IMPAIRMENTS | | | |
|---|---|---|---|
| *(Because of chronic pain, stiffness, or weakness in bones or joints, there is some loss of ability to move or use a part or parts of the body.)* | | One or both arms | 46 |
| | | One or both legs | 47 |
| | | Hip or pelvis | 48 |
| One or both hands | 44 | Back | 49 |
| One or both feet | 45 | Any combination of two or more parts of the body | 57 |

| PARTIAL PARALYSIS | | | |
|---|---|---|---|
| *(Because of a brain, nerve, or muscle problem, including palsy and cerebral palsy, there is some loss of ability to move or use a part of the body, including legs, arms, and/or trunk.)* | | One leg, any part | 63 |
| | | Both hands | 64 |
| | | Both legs, any part | 65 |
| | | Both arms, any part | 66 |
| One hand | 61 | One side of body, including one arm and one leg | 67 |
| One arm, any part | 62 | Three or more major parts of the body (arms and legs) | 68 |

| COMPLETE PARALYSIS | | | |
|---|---|---|---|
| *(Because of a brain, nerve, or muscle problem, including palsy and cerebral palsy, there is a complete loss of ability to move or use a part of the body, including legs, arms and/or trunk.)* | | Both arms | 73 |
| | | One leg | 74 |
| | | Both legs | 75 |
| One hand | 70 | Lower half of body, including legs | 76 |
| Both hands | 71 | One side of body, including one arm and one leg | 77 |
| One arm | 72 | Three or more major parts of the body (arms and legs) | 78 |

| OTHER IMPAIRMENTS | | | |
|---|---|---|---|
| Heart disease with no restriction or limitation of activity *(history of heart problems with complete recovery)* | 80 | Mental retardation *(A chronic and lifelong condition involving a limited ability to learn, to be educated, and to be trained for useful productive employment as certified by a State Vocational Rehabilitation agency under section 213.3102(t) of schedule A)* | 90 |
| Heart disease with restriction or limitation of activity | 81 | | |
| Convulsive disorder *(e.g., epilepsy)* | 82 | | |
| Blood diseases *(e.g., sickle cell disease, leukemia, hemophilia)* | 83 | | |
| Controlled diabetes with no restriction of activity | 84 | Mental or emotional illness *(A history of treatment for mental or emotional problems)* | 91 |
| Diabetes with limitation of activity due to complications such as retinitis, neuritis, etc. | 85 | | |
| Pulmonary or respiratory disorders *(e.g., tuberculosis, emphysema, asthma, etc.)* | 86 | Severe distortion of limbs and/or spine *(e.g., dwarfism, kyphosis (severe distortion of back), etc.)* | 92 |
| Kidney dysfunctioning *(e.g., if dialysis (use of an artificial kidney machine) is required, etc.)* | 87 | | |
| Cancer - a history of cancer with complete recovery | 88 | Disfigurement of face, hands, or feet *(e.g., distortion of features on skin, such as those caused by burns, gunshot injuries, and birth defects (gross facial birth marks, club feet, etc.))* | 93 |
| Cancer - undergoing surgical and/or medical treatment | 89 | | |

255-101

Standard Form 256 (1-77)
U.S. Civil Service Commission
FPM Chap. 290

## (Statistical Report)

## Part D. Format For Agency Report of Affirmative Action Program Plan on Employment of the Handicapped

**Statistical Data**

1. Total number of all employees as of December 31. (Include full-time permanent and all others.) ........ ______
2. Total number of all handicapped employees as of December 31. This number includes only those disabled veterans with reportable handicaps ........ ______

Data should conform to the instruction in FPM Letter 290–10, dated September 30, 1976

**Other**

1. Number of agency component activities and field establishments having appointing authority ........ ______
2. Percentage of time spent by agencywide coordinator for selective placement in managing the program ........ ______
3. Number of coordinators designated in all compouent agency activities.. ______

Percentage of time spent by component coordinators in implementing the program. Indicate the number in each group:

1– 10% ........ ______
11– 25% ........ ______
26– 50% ........ ______
51– 75% ........ ______
76–100% ........ ______

## Part E. Format For Agency Report of Affirmative Action Program Plan on Employment of Disabled Veterans

**Statistical Data as of December 31 (Use the following table format.)**

| VETERAN STATUS | NO. IN WORK FORCE | NO. HANDICAPPED |
|---|---|---|
| 10-point compensable ........ | | |
| 10-point noncompensable* ........ | | |
| 5 point ........ | XXXX | |

* EXCLUDES 10 POINT OTHER (SPOUSE, WIDOW/WIDOWER, AND MOTHER).

U. S. GOVERNMENT PRINTING OFFICE : [illegible]

APPENDIX A

## Guidance for Establishing Goals and Timetables for Hiring Persons with Specified Severe Disabilities

As is stated in the instructions, in establishing goals and timetables, an agency may wish to consider its own past performance, the performance of agencies with exemplary records, overall government progress, and census data. Agencies are reminded that goals and timetables may be established for the target group as an aggregate of specified disabilities rather than for each disability separately. Goals should be set and results should be reported in terms of percentage of new hires during the reporting period and percentage of change expected in work force composition.

Summaries of 1970 census data on disabilities are available from the President's Committee on Employment of the Handicapped, Washington, D.C. 20210, in a booklet called "One in Eleven." It indicates that one in eleven work-age adults reported disabilities that may interfere with ability to work.

Figures commonly used to identify work-age adults by disability are:*

| | | | |
|---|---|---|---|
| Paralyzed | 5,400,000 | or | 4.25% |
| Mentally retarded | 3,500,000 | or | 2.89% |
| Epileptic | 2,000,000 | or | 1.65% |
| Blind | 700,000 | or | .58% |
| Deaf | 250,000 | or | .21% |
| Mentally restored | 250,000 | or | .21% |
| Amputees | 200,000 | or | .17% |

According to the U.S. Department of Labor Employment Standards Administration, a conservative estimate places the number of handicapped persons of work force age and able to work at 7.2 million. This represents 5.95% of the entire work-force-age population. This estimate by the Labor Department is based on census and other data and encompasses a population roughly comparable to the transition year target group. Therefore, if census data are used to compute agency goals for disabilities in the target group, this percentage is recommended.

According to data from the Central Personnel Data File, as of December 31, 1978, the Federal Government employed 16,495 persons with the specified disabilities. This represents 0.79% of the total Federal work force on that date.

---

*These categories encompass all disability codes targeted except for code 92 (severe distortion of the limbs or spine), for which no work force data are available.

Only 16 Federal agencies reported more than 1% representation in designated categories. These agencies are as follows:

| Agency | Total Employees | Handicapped Employees with Targeted Disabilities | Percentage of Work Force with Targeted Disabilities |
|---|---|---|---|
| Committee for Purchase from the Blind and Other Severely Handicapped | 11 | 2 | 18.18 |
| National Commission on Library & Information Science | 48 | 1 | 2.08 |
| International Boundary & Water Commission | 334 | 6 | 1.79 |
| Community Service Administration | 1,106 | 18 | 1.63 |
| Government Printing Office | 7,511 | 115 | 1.53 |
| Veterans Administration | 235,471 | 3,495 | 1.48 |
| Federal Maritime Commission | 340 | 5 | 1.47 |
| National Mediation Board | 71 | 1 | 1.40 |
| Federal Communication Commission | 2,011 | 29 | 1.29 |
| Office of Management and Budget | 588 | 7 | 1.19 |
| General Services Administration | 39,172 | 457 | 1.17 |
| Securities and Exchange Commission | 1,954 | 23 | 1.17 |

| Agency | Total Employees | Handicapped Employees with Targeted Disabilities | Percentage of Work Force with Targeted Disabilities |
|---|---|---|---|
| Railroad Retirement Board | 1,831 | 21 | 1.15 |
| Unspecified Defense | 697 | 8 | 1.15 |
| Defense Logistics Agency | 46,676 | 523 | 1.12 |
| Interstate Commerce Commission | 2,137 | 24 | 1.12 |

Agencies with less than 5.95% representation in the designated categories must select a comparative base and establish goals and timetables for progress in terms of increased numbers of employees with targeted disabilities. If present representation equals or exceeds 5.95%, agencies may devote their efforts to assuring equitable internal representation in all occupations, grades, and levels of authority. Equitable internal representation of handicapped individuals will be a focus of Federal affirmative action in years to come.

APPENDIX B

## Analysis of Comments on Proposed Instructions to Agencies for Submission of 1979 Reports of Achievements and 1980 Affirmative Action Program Plans for Handicapped Individuals

Issue:
Several agencies questioned the necessity for having separate affirmative action program plans for handicapped individuals and for minorities and women, since the formats and submission dates are similar.

Response:
The possibility of combining plans was considered, but the idea was rejected because there are significant differences in the methods that must be used to implement affirmative action programs for handicapped individuals and for minorities and women. For example:

** Handicapped individuals are not included in the Federal Equal Opportunity Recruitment Program (FEORP). The types of work force statistics required for minorities and women under FEORP are not available for the handicapped population, and persons with disabilities face different employment problems. The rudimentary statistics that are available make it obvious that handicapped individuals are grossly underrepresented throughout the Federal work force. Targeting jobs is not practical because there would be underrepresentation in all categories, particularly insofar as persons with severe disabilities are concerned. Targeting disabilities is a better approach.

** Concern for the accessibility and useability of facilities in which Federal employees work is unique to affirmative action programs for handicapped individuals. There is no parallel in programs for minorities and women.

** Selection procedures that do not discriminate against minorities and women may discriminate against handicapped individuals. Remedies include reasonable accommodation in testing situations and use of excepted appointing authorities. The concepts and actions involved, and the planning upon which they must be based, are not pertinent to equal employment opportunity for other protected classes.

** In many Federal agencies, responsibility for management of affirmative action programs for handicapped individuals is not within the purview of the Equal Employment Opportunity Office. Separate plans facilitate implementation of programs in separate offices within an agency, at least during the transition year. At the same time, since the plans are to be as parallel as possible, agencies and the Equal Employment Opportunity Commission (EEOC) will be able to work toward combination of plans and programs in the future if this becomes practical. For the time being, since different data reports are required and different criteria will be used to evaluate agency plans and accomplishments, separate plans are necessary.

Issue:
A few agencies questioned the advisability of targeting specified disabilities. Some commentators cautioned that persons with disabilities that are not targeted might be excluded from all recruitment efforts and that this would constitute discrimination against some segments of the handicapped population. Other commentators felt that certain disabilities should be added to or removed from the target group.

Response:
The disabilities selected for the target group were chosen to provide a focus on severe handicaps that traditionally have caused persons to be excluded from the work force and that can be identified relatively easily for recruitment purposes during the transition year. Nondiscrimination regulations state clearly that no qualified handicapped individual may be denied employment because of a disability that is not job-related, regardless of the severity of the disability, regardless of whether the disability is real or imagined by an employer. Targeting certain disabilities for special recruitment in no way legitimizes discrimination against persons with other disabilities and in no way justifies discontinuation of affirmative action to hire handicapped individuals whose disabilities are not in the target group. The transition year instructions put agencies on notice that EEOC will emphasize certain disabilities when recruitment and placement efforts are evaluated. The possibility of altering the composition of the target group will be considered at the end of the transition year.

Issue:
Representatives of constituent organizations felt that affirmative action plans and reports should include analyses of reasonable accommodations being made by agencies, career development and upward mobility of handicapped employees, and retention of employees who become disabled.

Response:
One purpose of the transition year is to give EEOC an opportunity to find out what agencies can do with existing resources if these resources are focused on a few specific goals rather than stretched to meet as many needs in as many areas as possible. The focus during the transition year will be on recruitment, placement, facility accessibility, and elimination

of selection barriers. Reasonable accommodation is an essential element of affirmative action and nondiscrimination, particularly insofar as severe disabilities are concerned. Agencies will not be able to achieve their transition year goals without accommodating the disabilities of applicants and employees. Partially for this reason, agencies are not being asked to use their resources to catalog or report on accommodations. However, such an exercise may be valuable in the future. It is recognized that reasonable accommodation is one of many areas that should be addressed in a comprehensive affirmative action program plan even though they are not being addressed through transition-year planning and reporting processes. Career development and upward mobility and retention of employees who become disabled also are in this category.

Issue:
Several commentators requested guidance for establishing goals and timetables for hiring individuals with targeted disabilities.

Response:
New language has been added to the instructions, and guidance is provided in Appendix A.

Issue:
Some agencies felt they would not be able to collect and analyze handicap data in a timely fashion.

Response:
Some agencies, particularly the larger ones, have automated data retrieval capability. All agencies have access to the Central Personnel Data File maintained by the Office of Personnel Management (OPM). OPM has a data run as of December 31, 1978, which gives agency work force data by disability. Agencies are to use these data to conduct work force analyses for the purpose of establishing goals and timetables.

Issue:
Some agencies asked for clarification of the request for applicant data, since a person's handicap status generally is not known when he or she applies for employment or is referred on a certificate.

Response:
The instructions call for a special recruitment program for handicapped individuals. Data reported are to be collected through this special effort, and as part of this effort recruiters may invite applicants to identify disabilities in cover letters accompanying applications. It is recognized that applications from handicapped persons may be received independent of special recruitment efforts and that these handicapped applicants may escape notice. If selected, however, it is

likely they will identify themselves as handicapped at the time they come on board. Thus, agencies will be able to include them in accession data.

Issue:
Some agencies asked for clarification of the statement "To the extent possible agencies are to adopt and apply the basic principles embodied in the Federal Equal Opportunity Recruitment Program (FEORP)."

Response:
First, a typographical error has been corrected. The word intended was "adapt," not "adopt." Handicapped individuals are not included in FEORP principally because they are not named in the enabling legislation. However, it is also true that the work force statistics required for minorities and women under FEORP are not available for the handicapped population. EEOC is requiring a special recruitment effort for handicapped individuals that will be similar to but different than FEORP for minorities and women. For this purpose, underrepresentation is to be addressed in terms of disabilities instead of job categories. Recruitment sources that may be tapped include but are not limited to State rehabilitation agencies, Veterans Administration counselors, Selective placement specialists in OPM area offices, schools for disabled people, campus organizations of disabled students, and organizations of and for persons with disabilities. Two publications may be helpful:

** Directory of Organizations Interested in the Handicapped. Revised 1976. Available from the publisher: Committee for the Handicapped, People-to-People Program, Suite 610, La Salle Building, Connecticut Avenue and L Street, N.W., Washington, D.C. 20036.

** Directory of National Information Sources on Handicapping Conditions and Related Services. December 1976. Available from the publisher: Office for Handicapped Individuals, Department of Health, Education, and Welfare, Washington, D.C. 20201.

Issue:
One commentator foresaw difficulties with goals and timetables for removal of architectural barriers since some buildings are covered by the Architectural Barriers Act of 1968 and others are not.

Response:
Agencies are to survey their facilities and report the extent of accessibility. A reporting format is being developed that will allow agencies to indicate which facilities are and which facilities are not covered by the Architectural Barriers Act of 1968. Nondiscrimination regulations specifically prohibit

employment discrimination on the basis of facility inaccessibility, and it is EEOC's view that all facilities in which Federal employees work should be barrier-free. If an agency believes accessibility problems are so severe that it is impossible to establish a time frame for barrier removal, detailed justification will be required. If indeed it is impossible to make a facility accessible, the agency will be required to find other ways of accommodating handicapped applicants and employees affected by inaccessibility.

Issue:
Representatives of constituent organizations felt that meaningful accessibility is achieved only when communication and transportation barriers are removed along with architectural barriers.

Response:
The reporting format that is being developed addresses all three types of barriers. The emphasis is on architectural barriers. Tranportation barriers are considered insofar as characteristics of the facility and the area immediately surrounding it may impede the ability of a handicapped individual to approach and leave the building in an automobile, in a wheelchair, or on foot. Communication barriers are dealt with in terms of telephone facilities, which must be useable by disabled people, including those who are deaf and those who use wheelchairs.

Issue:
Several agencies questioned the order in which plans were to be submitted. It was suggested that the recruitment plan should come after, not before, analysis of work force data and establishment of goals and timetables.

Response:
The instructions have been changed so that February 1, 1980, is the due date for work force analyses, goals and timetables, and recruitment plans. In preparing these items, agencies will be able to use work force data as a basis for establishing goals and timetables and designing recruitment plans.

EEOC SUBMISSION OF RESPONDENT 501 AGENCIES
AS OF 8/7/80

|  | FY 79 Achievements |  |  | FY 80 AA Program Plans |  |  | [illegible] |  |
|---|---|---|---|---|---|---|---|---|
|  | Satis- factory | Unsatis- factory | Not Submitted | Complete | Incomplete | Not Submitted | Submitted | Not Submitted |
| Action |  |  | X | X |  |  |  | X |
| Administrative Conference of the U. S. | X |  |  | X |  |  |  | X |
| Advisory Commission on Intergvt Relations | X |  |  | X |  |  |  | X |
| Advisory Committee on Federal Pay |  |  | X | X |  |  |  | X |
| Agency for International Development |  |  | X |  | X |  | X |  |
| Agriculture | X |  |  | X |  |  | X |  |
| Air Force | X |  |  |  | X |  | X |  |
| American Battle Monuments Commission |  |  | X |  |  | X |  | X |
| Appalachian Regional Commission | X |  |  | X |  |  | X |  |
| Arms Control & Disarmament Agency | X |  |  |  | X |  |  | X |
| Army | X |  |  |  | X |  |  | X |
| Army/Air Force Exchange Service |  | X |  |  |  | X |  | X |
| Board for International Broadcasting | X |  |  | X |  |  |  | X |
| Canal Co/Canal Zone Government | X |  |  |  | X |  | X |  |
| Central Intelligence Agency | X |  |  |  | X |  |  | X |
| Civil Aeronautics Board | X |  |  | X |  |  |  | X |
| Commerce | X |  |  |  | X |  |  | X |
| Commission on Civil Rights |  | X |  | X |  |  | X |  |
| Commission of Fine Arts |  |  | X |  |  | X |  | X |
| Committee for Purchase from Blind etc. | X |  |  | X |  |  |  | X |
| Commodity Futures Trading Commission |  |  | X |  | X |  |  | X |
| Community Services Administration |  | X |  |  |  | X |  | X |
| Consumer Product Safety Commission | X |  |  | X |  |  | X |  |
| Defense, Office of Secretary |  | X |  | X |  |  | X |  |
| Defense Communications Agency | X |  |  | X |  |  |  | X |

Exhibit No. 7

| AS OF 8/7/80 | [illegible] | | | [illegible] | | | [illegible] | |
|---|---|---|---|---|---|---|---|---|
| | Satis-factory | Unsatis-factory | Not Submitted | Complete | Incomplete | Not Submitted | Submitted | Not Submitted |
| Defense Contract Audit Agency | X | | | X | | | | X |
| Defense Intelligence Agency | | X | | X | | | X | |
| Defense Investigative Service | X | | | X | | | | X |
| Defense Logistics Agency | X | | | X | | | X | |
| Defense Mapping Agency | X | | | X | | | X | |
| Defense Nuclear Agency | | X | | | | X | | X |
| District of Columbia Government | | | X | | | X | | X |
| Energy | X | | | | X | | X | |
| Environmental Protection Agency | X | | | X | | | | X |
| Equal Employment Opportunity Commission | X | | | X | | | X | |
| Executive Office of the President | | | X | X | | | X | |
| Export/Import Bank | X | | | X | | | | X |
| Farm Credit Administration | | X | | X | | | | X |
| Federal Communications Commission | X | | | X | | | X | |
| Federal Deposit Insurance Corp | X | | | X | | | X | |
| Federal Election Commission | | | X | X | | | X | |
| Federal Emergency Management Agency | | | X | | | X | | X |
| Federal Home Loan Bank Board | X | | | | X | | X | |
| Federal Maritime Commission | X | | | X | | | | X |
| Federal Mediation & Conciliation | | | X | | | X | | X |
| Federal Mine Safety & Health Review | X | | | X | | | | X |
| Federal Reserve System | | | X | | | X | | X |
| Federal Trade Commission | | X | | X | | | X | |
| Foreign Claims Settlement Commission | X | | | X | | | | X |
| General Services Administration | X | | | X | | | X | |

| AS OF 8/7/80 | Satis-factory | Unsatis-factory | Not Submitted | Complete | Incomplete | Not Submitted | Submitted | Not Submitted |
|---|---|---|---|---|---|---|---|---|
| Government Printing Office | X | | | X | | | | X |
| Harry S. Truman Scholarship Fund | | | X | X | | | | X |
| Health, Education, & Welfare | X | | | X | | | X | |
| Housing & Urban Development | X | | | X | | | X | |
| Inter-American Foundation | | | X | | | X | | X |
| Interior | X | | | | X | | | X |
| International Communication Agency | X | | | | X | | | X |
| International Trade Commission | X | | | | X | | X | |
| Interstate Commerce Commission | X | | | | | X | | X |
| Japan-U.S. Friendship Commission | | | X | X | | | | X |
| Justice | X | | | | | X | | X |
| Labor | X | | | X | | | X | |
| Marine Mammal Commission | | X | | X | | | | X |
| Merit Systems Protection Board | | | X | | | X | | X |
| Metric Board | X | | | | | X | | X |
| Natl Adv Council on Economic Opportunity | X | | | X | | | | X |
| Natl Aeronautics & Space Administration | X | | | X | | | X | |
| Natl Capital Planning Commission | X | | | X | | | | X |
| Natl Commission on Air Quality | X | | | X | | | | X |
| Natl Commission on Library & Info. Science | | | X | | | X | | X |
| Natl Credit Union Administration | X | | | | | X | | X |
| Natl Endowment for the Arts | | | X | | | X | | X |
| Natl Endowment for the Humanities | X | | | X | | | X | |
| Natl Gallery of Art | | X | | X | | | X | |

| AS OF 8/7/80 | Satis- factory | Unsatis- factory | Not Submitted | Complete | Incomplete | Not Submitted | Submitted | Not Submitted |
|---|---|---|---|---|---|---|---|---|
| Natl Labor Relations Board | X | | | | X | | X | |
| Natl Mediation Board | | X | | | | X | | X |
| Natl Science Foundation | | X | | X | | | X | |
| Natl Security Agency | X | | | | | X | | X |
| Natl Transportation Safety Board | | | X | | | X | | X |
| Navy | X | | | | | X | | X |
| Nuclear Regulatory Commission | | | X | | | X | | X |
| Occupational Safety & Health Review | | | X | | | X | | X |
| Office of Personnel Management | X | | | | | X | | X |
| Overseas Private Investment Corp | X | | | X | | | | X |
| Pennsylvania Ave. Development Corp | | | X | | | X | | X |
| Pension Benefit Guaranty Corp | X | | | | | X | | X |
| Postal Rate Commission | X | | | X | | | | X |
| Postal Service | | | X | | | X | | X |
| Railroad Retirement Board | X | | | | | X | | X |
| Securities & Exchange Commission | X | | | X | | | X | |
| Selective Service System | | | X | X | | | | X |
| Small Business Administration | | | X | | | X | | X |
| Smithsonian Institution | X | | | X | | | | X |
| Soldiers' & Airmen's Home | | X | | | | X | | X |
| State | X | | | X | | | | X |
| Tennessee Valley Authority | X | | | | X | | | X |
| Transportation | X | | | | | X | | X |
| Treasury | X | | | | X | | X | |
| Uniformed Svcs Univ Health Sciences | | | X | X | | | X | |

| AS OF 8/7/80 | FY 79 Achievements | | | FY 80 AA Program Plans | | | [illegible] | |
|---|---|---|---|---|---|---|---|---|
| | Satis- factory | Unsatis- factory | Not Submitted | Complete | Incomplete | Not Submitted | Submitted | Not Submitted |
| Veterans Administration | X | | | | | X | | X |
| Water Resources Council | | | X | | | X | | X |
| TOTALS | 61 | 13 | 27 | 52 | 16 | 33 | 32 | 69 |

426

LIST OF AGENCIES THAT HAVE NOT SUBMITTED 501 PLANS AS OF August 7, 1980

| | |
|---|---|
| Postal Service | 661,800 |
| Navy | 268,234 |
| Veterans Administration | 228,834 |
| Transportation | 74,683 |
| Justice | 55,134 |
| District of Columbia Government | 46,625 |
| Army/Air Force Exchange Service | 42,380 |
| Office of Personnel Management | 9,750 |
| Small Business Administration | 5,263 |
| Federal Emergency Management Agency | 3,071 |
| Nuclear Regulatory Commission | 2,844 |
| Interstate Commerce Commission | 2,106 |
| Railroad Retirement Board | 1,913 |
| Federal Reserve System | 1,466 |
| Community Services Administration | 1,075 |
| Soldiers' & Airmen's Home | 1,028 |
| Defense Nuclear Agency | 624 |
| Natl Credit Union Administration | 593 |
| Federal Mediation & Conciliation | 554 |
| Pension Benefit Guaranty Corp | 427 |
| Natl Transportation Safety Board | 390 |
| Natl Endowment for the Arts | 342 |
| Merit Systems Protection Board | 316 |
| Occupational Safety & Health Review | 182 |
| Natl Mediation Board | 70 |
| Inter-American Foundation | 69 |
| Water Resources Council | 50 |
| American Battle Monuments Commission | 49 |
| Metric Board | 39 |
| Pennsylvania Ave. Development Corp | 32 |
| Natl Commission on Library & Info. Science | 8 |
| Commission of Fine Arts | 7 |
| | |
| TOTAL | |

| | |
|---|---|
| Natl Security Agency | NO DATA |

*Exhibit No. 8*

APPENDIX F - CALIFORNIA
STATUTE ON HANDICAPPED PERSONS (SEE FOOTNOTE 8 AT P. 216,
VOL. I, MAY 13, 1980.)

es, or allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his or her religious observances.

(b) In determining whether a reasonable accommodation would impose an undue hardship on the operations of an employer or other covered entity, factors to be considered include, but are not limited to:

(1) The overall size of the employer or other covered entity with respect to the number of employees, number and type of facilities, and size of budget;

(2) The type of the employer's or other covered entity's operation, including the composition and structure of the workforce or membership;

(3) The nature and cost of the accommodation involved;

(4) Reasonable notice to the employer or other covered entity of the need for accommodation; and

(5) Any available reasonable alternative means of accommodation.

(c) Reasonable accommodation includes, but is not limited to, the following specific employment policies or practices:

(1) *Interview and Examination Times.* Scheduled times for interviews, examinations, and other functions related to employment opportunities shall reasonably accommodate religious practices.

(2) *Dress Standards.* Dress standards or requirements for personal appearances shall be flexible enough to take into account religious practices.

(3) *Union Dues.* An employer or union shall not require membership from any employee or applicant whose religious creed prohibits such membership. Reasonable accommodation may include options to pay the union a sum in lieu of dues without membership, or a substitute payment to a charity.

*Reference:* Secs. 12920, 12921, 12940, Government Code.

[¶ 20,845.04]

Sec. 7293.4. Pre-Employment Practices. —Pre-employment inquiries regarding an applicant's availability for work on weekends or evenings shall not be used as a pretext for ascertaining his or her religious creed, nor shall such inquiry be used to evade the requirement of reasonable accommodation. However, inquiries as to the availability for work on weekends or evenings are permissible where reasonably related to the normal business requirements of the job in question.

*Reference:* Secs. 12920, 12921, 12940, Government Code.

## SUBCHAPTER 9. PHYSICAL HANDICAP DISCRIMINATION

[¶ 20,846.05]

Sec. 7293.5. General Prohibitions Against Discrimination on the Basis of Physical Handicap.—(a) *Statutory Source.* These Regulations are adopted by the Commission pursuant to Sections 1413.1 and 1420 of the Act (Sections 12926 and 12940 of the Government Code).

(b) *Statement of Purpose.* The Fair Employment and Housing Commission is committed to ensuring each person employment opportunities commensurate with his or her abilities. These regulations are designed to assure discrimination-free access to employment opportunities notwithstanding any individual's actual or perceived physical handicap.

(c) *Incorporation of General Regulations.* These physical handicap regulations incorporate each of the provisions of Subchapters 1 and 2 of chapter 2, unless specifically excluded or modified.

*Reference:* Secs. 12920, 12921, 12926, 12940, Government Code.

[¶ 20,846.06]

Sec. 7293.6. Definitions.—As used in this subchapter the following definitions apply:

(a) "Physical Handicap" includes:

(1) Impairment of sight, hearing or speech; or

(2) Impairment of physical ability because of:

(A) Amputation, or

(B) Loss of function, or

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(C) Loss of coordination; or

(3) Any other health impairment which requires special education or related services.

(4) However, physical handicap does not include the following conditions: mental illness, mental retardation, alcoholism, or narcotics addiction.

(b) "Impairment of Sight, Hearing, or Speech." Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting seeing, hearing, or speaking.

(c) "Impairment of Physical Ability Because of Amputation." Any anatomical loss affecting the skin or the musculoskeletal body system.

(d) "Impairment of Physical Ability Due to Loss of Function." Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine.

(e) "Impairment of Physical Ability Due to Loss of Coordination." Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting any muscular or motor function.

(f) "Health Impairment Which Requires Special Education or Related Services." Any health impairment for which a state program or service is currently or was formerly authorized to serve the "physically handicapped," including programs and services authorized by the following provisions of the Education Code as interpreted in the California Administrative Code:

(1) Part 30, *Special Education Programs,* (commencing with Section 56000) of Division 4 of Title 2 of the Education Code;

(2) Chapter 5, Education — *Physically Handicapped,* (commencing with Section 78700) of Part 48 of Division 7 of Title 3 of the Education Code;

(3) Article 12, *Education of Physically Handicapped,* (commencing with Section 1850) of Chapter 6 of Part 2 of Division 1 of Title 1 of the Education Code.

(4) Persons covered by the statutory definitions of (1), (2) and (3) above include:

(A) The deaf or hearing-impaired;

(B) The blind or partially-seeing;

(C) The orthopedic or health impaired;

(D) The aphasic;

(E) The speech handicapped;

(F) Persons with physical illnesses or physical conditions which make attendance in regular day classes impossible or inadvisable; and

(G) Persons with physical impairments that require instruction in remedial physical education.

(5) These statutory references are illustrative and not inclusive.

(6) This subsection (f) refers to health impairments and not to enrollment in any particular program.

(g) "Major Life Activities." Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(h) "Has a Record of a Physical Handicap." Has a written or unwritten history of, or has been misclassified as, having or having had a physical handicap which substantially limits one or more major life activities.

(i) "Is Regarded as Having a Physical Handicap."

(1) Has a physical handicap that does not in fact substantially limit one or more major life activities but is treated by an employer or other covered entity as having a physical handicap which does substantially limit major life activities; or

(2) Has a physical handicap that substantially limits one or more major life activities only as a result of the attitude of an employer or other covered entity toward such a physical handicap; or

(3) Does not have a physical handicap that substantially limits one or more major life activities but is treated by an employer or other covered entity as having or having had a physical handicap that substantially limits major life activities; or

(4) Does not have a physical handicap that substantially limits one or more major life activities but is treated by an employer or other covered entity as having an increased likelihood of having a physical handicap that substantially limits major life activities.

(j) "Handicapped Individual." Any individual who:

(1) Has a physical handicap which substantially limits one or more major life activities;

(2) Has a record of a physical handicap;

(3) Is regarded as having a physical handicap.

(k) "Qualified Handicapped Individual." Any handicapped individual who, with reasonable accommodation, can perform the essential functions of the job or training program in question.

*Reference:* Secs. 12920, 12921, 12926, 12940, Government Code.

[¶ 20,846.07]

**Sec. 7293.7. Establishing Physical Handicap Discrimination.**—Physical handicap discrimination is established by showing that an employment practice denies, in whole or in part, an employment benefit to a qualified handicapped individual.

*Reference:* Secs. 12920, 12921, 12926, 12940, Government Code.

[¶ 20,846.08]

**Sec. 7293.8. Defenses.**—(a) *In addition to any other defense provided herein,* any defense permissible under Subchapter 1 shall be applicable to this subchapter.

(b) *Health or Safety of Qualified Handicapped Individual.* It is a permissible defense for an employer or other covered entity to demonstrate that after reasonable accommodation the applicant or employee cannot perform the essential job functions of the position in question in a manner which would not endanger his or her health or safety because the job imposes an imminent and substantial degree of risk to the applicant or employee.

(c) *Health and Safety of Others.* It is a permissible defense for an employer or other covered entity to demonstrate that after reasonable accommodation has been made, the applicant or employee cannot perform the essential job functions in a manner which would not endanger the health or safety of others to a greater extent than if a non-handicapped person performed the job.

(d) *Future Risk.* However, it is no defense to assert that a qualified handicapped person has a condition or a disease with a future risk, so long as the condition or disease does not presently interfere with his or her ability to perform the job in a manner that will not immediately endanger the handicapped person or others, and the person is able to safely perform the job over a reasonable length of time. "A reasonable length of time" is to be determined on an individual basis.

(e) *Factors to be considered when determining the merits of the defenses enumerated in Section 7293.8(b)-(d) include, but are not limited to:*

(1) Nature of the physical handicap;

(2) Length of the training period relative to the length of time the employee is expected to be employed;

(3) Type of time commitment, if any, routinely required of all other employees for the job in question; and

(4) Normal workforce turnover.

*Reference:* Secs. 12920, 12921, 12940, Government Code.

[¶ 20,846.09]

**Sec. 7293.9. Reasonable Accommodation.**—Any employer or other covered entity shall make reasonable accommodation to the known physical handicap of any handicapped individual unless the employer or other covered entity can demonstrate that the accommodation would impose an undue hardship.

(a) *Examples of Reasonable Accommodation.* Reasonable accommodation may include, but is not limited to, such measures as:

(1) Accessibility. Making facilities used by employees readily accessible to and usable by handicapped persons; and

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(2) Job Restructuring. Job restructuring, reassignment or transfer, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(b) *Limitations on Accommodation.* However, no accommodation shall be imposed which requires an employer or other covered entity to alter its premises beyond safety requirements applicable to other employees.

(1) *Structural Alterations.* As used in subsection (b), "to alter its premises" means a structural alteration of the building or grounds. Minor structural alterations may be required as reasonable accommodation when appropriate or when pursuant to other accommodations, such as internal reorganization or modification of equipment.

(2) *Existing Duty to Accommodate.* Subsection (b) does not apply where there is an existing duty of accommodation under applicable federal or state law, or federal or state regulation.

(3) *New Structures.* Subsection (b) applies only to existing structures and to new constructions begun within 180 days after the effective date of the Physical Handicap Regulations, Subchapter 9 of these Regulations. Subsection (b) does not apply to any structure, structural addition, change or modification begun later than 180 days after the effective date of Subchaper 9 of these Regulations.

(c) *Undue Hardship.* In determining whether an accommodation would impose an undue hardship on the operations of an employer or other covered entity, factors to be considered include, but are not limited to:

(1) The overall size of the employer or other covered entity with respect to the number of employees, number and type of facilities, and size of budget;

(2) The type of the employer's or other covered entity's operation, including the composition and structure of the workforce;

(3) The nature and cost of the accommodation needed relative to the ability of the employer or other covered entity to absorb the cost;

(4) The availability of state, federal, or local tax incentives; and

(5) The amount of assistance available from other agencies or organizations, including the California State Department of Rehabilitation, the U. S. Department of Health, Education and Welfare, and other private and public agencies concerned with the physically handicapped.

(d) *Accessibility Standards.* To comply with Subsections 7293.9(a) and (b), the design, construction or alteration of premises shall be in conformance with the standards set forth by the Office of the State Architect in the State Building Code, Title 24, pursuant to Chapter 7 (commencing with Section 4450), Division 5 of Title 1 of the Government Code and Part 5.5 (commencing with Section 19955) of Division 13 of the Health and Safety Code.

*Reference:* Secs. 12920, 12921, 12926, 12940, Government Code.

[¶ 20,846.10]

Sec. 7294.0. Pre-Employment Practices. —(a) *Recruitment and Advertising.*

(1) Employers and other covered entities engaged in recruiting activities shall consider qualified handicapped individuals for all jobs unless pursuant to a permissible defense.

(2) It is unlawful to advertise or publicize an employment benefit in any way which discourages or is designed to discourage handicapped individuals.

(b) *Applications.*

(1) *An employer or other covered entity must fairly consider applications from handicapped individuals.* Where applications are being accepted in the normal course of business, an application from a handicapped individual must be accepted.

(2) *Prohibited Inquiries.* It is unlawful to ask general questions on physical condition in an application form or pre-employment questionnaire or in the course of the selection process. Examples of prohibited inquiries are:

(A) "Do you have any particular disabilities?"

(B) "Have you ever been treated for any of the following diseases or conditions?"

(C) "Are you now receiving or have you ever received Workers Compensation?"

(3) *Permissible Job-Related Inquiry.* It is wful to inquire concerning an applicant's resent physical condition or medical his-ry if, and only if, that inquiry is directly lated and pertinent to the position in uestion or is directly related to a deter-ination of whether the applicant would danger his or her health and safety or e health and safety of others.

(c) *Interviews.* An employer or other vered entity shall make reasonable ac-mmodation to the needs of physically andicapped persons in interviewing situa-ons, *e.g.*, providing interpreters for the earing-impaired, or scheduling the inter-ew in a room accessible to persons in heelchairs.

(d) *Medical Examination.* An employer ay condition an offer of employment on e results of a medical examination con-ucted prior to the employee's entrance on uty in order to determine fitness for the b in question provided that:

(1) All entering employees in similar o itions are subjected to such an examination.

(2) Where the results of such a medical xamination would result in disqualifica-on, an applicant or employee may submit ndependent medical opinions for considera-ion before a final determination on dis-ualification is made.

(3) The results are to be maintained on eparate forms and shall be accorded con-dentiality as medical records, except that:

(A) Supervisors and managers may be formed of restrictions on the work or uties of physically handicapped persons nd necessary accommodations; and

(B) First aid and safety personnel may e informed, where appropriate, that the ndition might require emergency treatment.

*Reference:* Secs. 12920, 12921, 12926, 12994, overnment Code.

[¶ 20,846.11]

Sec. 7294.1. Employee Selection.—(a) *rospective Need for Reasonable Accommo-ation.* An employer or other covered ntity shall not deny an employment benefit ecause of the prospective need to make easonable accommodation to a handicapped individual.

(b) *Testing.*

(1) An employer or other covered entity shall not make use of any testing criterion that screens out, tends to screen out or otherwise adversely affects a handicapped individual, unless:

(A) The test score or other selection criterion used is shown to be job-related for the position in question; and

(B) An alternative job-related test or criterion that does not screen out or tend to screen out as many handicapped persons is not available.

(2) Tests of physical agility or strength shall not be used unless the physical agility or strength measured by such test is related to job performance.

(3) An employer or other covered entity shall select and administer tests concerning employment so as to best ensure that, when administered to any individual, including a handicapped individual, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure rather than reflecting the applicant's or employee's physical handicap, except when those skills are the factors that the test purports to measure. To accomplish this end, reasonable accommodation must be made in testing conditions. For example:

(A) The test site must be accessible to applicants with a physical handicap.

(B) For blind persons, an employer or other covered entity might translate written tests into Braille, provide or allow the use of a reader, or provide oral presentation of the test.

(C) For quadraplegic persons, an employer or other covered entity might provide or allow someone to write for the applicant or to allow oral responses to written test questions.

(D) For persons with a hearing impairment, an employer or other covered entity might provide or allow the services of an interpreter.

(E) For persons whose handicaps interfere with their ability to communicate, an employer or other covered entity might allow additional time to complete the examination.

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(F) Alternate tests or individualized assessments may be necessary where test modification is inappropriate. Competent advice should be sought before attempting such modification since the validity of the test may be affected.

(4) Where reasonable accommodation is appropriate, an employer shall permit the use of readers, interpreters, or similar supportive individuals or instruments.

*Reference:* Secs. 12920, 12921, 12926, 12994, Government Code.

[¶ 20,846.12]

**Sec. 7294.2. Terms, Conditions and Privileges of Employment.**—(a) *Fringe Benefits.* It shall be unlawful to condition any employment decision regarding a physically handicapped applicant or employee upon the waiver of any fringe benefit.

*Reference:* Secs. 12920, 12921, 12926, 12994, Government Code.

# Mandatory Retirement

## (Public Employees)

## ¶ 20,865

Reproduced below is the California Act which makes illegal the mandatory retirement of public employees prior to attainment of age 70. The Act reads as presented in S. B. 130, L. 1978, effective July 11, 1978.

**Section 7508.** No public pension and retirement plan shall require any members to retire prior to the attainment of age 70. This section shall not be construed to apply to persons engaged in active law enforcement or who are firemen.

[The next page is 8193-5.]

*Exhibit No. 9*

# REMARKS

OF

THOMAS J. PELOSO, JR.

CHIEF DEPUTY DIRECTOR
MICHIGAN DEPARTMENT OF CIVIL RIGHTS

BEFORE THE

U.S. COMMISSION ON CIVIL RIGHTS

"CONSULTATION ON ISSUES OF HANDICAPPED AMERICANS"

MAY 13, 1980

442

MICHIGAN'S CIVIL RIGHTS ENFORCEMENT POWERS ARE DERIVED FROM THE STATE CONSTITUTION AND TWO PUBLIC ACTS (P.A. 453 AND 220 OF 1976), EFFECTIVE MARCH 31, 1977, WITH SUBSEQUENT AMENDMENTS. THE COMPREHENSIVE ELLIOTT-LARSEN CIVIL RIGHTS ACT BROADENED JURISDICTION IN AREAS OF EMPLOYMENT, EDUCATION, HOUSING, PUBLIC ACCOMMODATION AND PUBLIC SERVICE TO INCLUDE SEVERAL NEW PROTECTED CLASSES (AGE, SEX, MARITAL STATUS, HEIGHT, WEIGHT AND ARREST RECORD). PROTECTION FOR THE HANDICAPPED, HOWEVER, PRESENTED SOME UNIQUE PROBLEMS THAT COULD BE BETTER SERVED BY SEPARATE LEGISLATION. THE SEPARATE LEGISLATION, OFFERING PROTECTION FOR THE HANDICAPPED IN PARALLEL AREAS, IS PUBLIC ACT 220, THE MICHIGAN HANDICAPPERS' CIVIL RIGHTS ACT.

THE HANDICAPPERS' ACT SPECIFICALLY PROHIBITS DISCRIMINATION BECAUSE OF HANDICAP UNRELATED TO ABILITY TO PERFORM A SPECIFIC JOB OR BENEFIT FROM A PUBLIC ACCOMMODATION OR PLACE OF RESIDENCE. IT PROHIBITS EDUCATIONAL INSTITUTIONS FROM PROMOTING OR FOSTERING PHYSICAL OR MENTAL STEREOTYPES IN CURRICULUM DEVELOPMENT, TEXTBOOKS AND TRAINING OR LEARNING MATERIALS. IT ENCOURAGES, BUT DOES NOT REQUIRE AFFIRMATIVE ACTION, PERMITTING ADOPTION, WITH COMMISSION APPROVAL, OF PLANS TO "ELIMINATE PRESENT EFFECTS OF PAST DISCRIMINATORY PRACTICES OR ASSURE EQUAL OPPORTUNITY" TO HANDICAPPERS.

THE ACT PROHIBITS ELICITING INFORMATION CONCERNING HANDICAP UNRELATED TO JOB PERFORMANCE. THE STATE'S ATTORNEY GENERAL RECENTLY NEGATED A DEPARTMENT POLICY WHICH MADE IT UNLAWFUL TO INQUIRE ABOUT HANDICAP OR THE USE OF ADAPTIVE DEVICES OR AIDS. HE HELD THAT SUCH INFORMATION WAS NECESSARY FOR PROVISION OF REASONABLE ACCOMMODATION. P.A. 220 INCORPORATES A CLAUSE MAKING EMPLOYERS RESPONSIBLE FOR ACCOMMODATING AN EMPLOYEE OR APPLICANT, UNLESS SUCH ACCOMMODATION WOULD IMPOSE UNDUE HARDSHIP. IN SOME CASES, A SIMPLE ADAPTIVE AID OR DEVICE MAY EQUIP THE HANDICAPPER FOR JOB PERFORMANCE. THERE IS LITTLE CASE LAW TO ESTABLISH "REASONABLE ACCOMMODATION," HOWEVER, AND EVEN SKIMPIER HISTORY OF VOLUNTARY ACCOMMODATION FOR HANDICAPPERS BY EMPLOYERS.

NEED FOR NEW INVESTIGATIVE TRAINING FOR STAFF WAS INHERENT WITH THE ENACTMENT OF THE HANDICAPPERS' CIVIL RIGHTS ACT. SPECIAL INVESTIGATIVE TOOLS ARE EMPLOYED: THE CLAIMANT MUST (1) COMPLETE AN INFORMATION SHEET IDENTIFYING THE HANDICAP AND THE AGENCY OR PHYSICIAN CERTIFYING THE HANDICAP, AND INDICATING REASONABLE ACCOMMODATION THE RESPONDENT COULD MAKE TO EMPLOY THE HANDICAPPER, AND (2) SIGN MEDICAL RELEASE FORMS FOR OBTAINING NECESSARY RECORDS.

INVESTIGATORS, WHO RARELY POSSESS MEDICAL EXPERTISE, MUST RELY ON OUTSIDE EXPERTS FOR JUDGING THE SEVERITY OR RESTRICTIONS OF A PHYSICAL OR MENTAL CONDITION. IF RESPONDENT AND CLAIMANT PHYSICIANS DISAGREE ON LIMITATIONS IMPOSED BY THE HANDICAP, A THIRD (NEUTRAL) PHYSICIAN IS EMPLOYED, WITH THE THIRD OPINION RECEIVING THE WEIGHT IN RESOLUTION OF THE COMPLAINT.

ANOTHER INVESTIGATIVE TOOL IS THE JOB OR TASK ANALYSIS. FOR THIS, THE INVESTIGATOR MUST VISIT THE JOB SITE, OBSERVE AND OFTEN EVEN PERFORM THE WORK, QUESTION OTHER WORKERS AND SOMETIMES CONFER WITH UNIONS HAVING KNOWLEDGE OF THE ACTUAL JOB REQUIREMENTS.

ALTHOUGH PUBLIC ACT 220 REQUIRES HANDLING OF COMPLAINTS ON A CASE-BY-CASE BASIS, THERE ARE SIMILARITIES IN THE CASES RESOLVED TO DATE. ALL HAVE INVOLVED DEFENSIVE ARGUMENTS OF RESPONDENTS WHO MAINTAIN THEY CAN NOT HIRE HANDICAPPERS BECAUSE THEY COULD INCUR FUTURE INJURIES. FURTHER, THEY ARGUE A DRAMATIC INCREASE IN LIABILITY FOR WORKERS COMPENSATION IMPOSES UNDUE HARDSHIP.

THE COMMISSION REJECTS THE POSSIBLE FUTURE INJURY DEFENSE, INTERPRETING THE LAW TO MEAN CURRENT ABILITY TO PERFORM. THE WORKERS COMPENSATION LIABILITY PRESENTS AN ADMITTED CONFLICT WITH PROTECTION FROM DISCRIMINATION FOR THE HANDICAPPED. THE ISSUE WAS SUBJECT FOR HEATED DEBATE BY THE LEGISLATURE DURING DEVELOPMENT OF THE ACT. ARGUMENTS OF THE POSSIBLE BURDEN IT COULD PLACE ON RESPONDENTS WERE OVERRIDDEN BY PASSAGE OF THE BILL.

THE COMMISSION HAS RULED CONSISTENTLY THAT HANDICAPPED APPLICANTS PROTECTED BY THE ACT MUST BE CONSIDERED FOR SPECIFIC JOBS. THIS RESULTS FROM AUTO INDUSTRY PRACTICES OF PLACING APPLICANTS IN BROAD JOB CLASSIFICATIONS. LIMITATIONS DETERMINED, FOLLOWING REQUIRED PHYSICAL EXAMINATIONS, THEN WERE APPLIED TO

ALL JOBS WITHIN THE CLASSIFICATION. IN THESE CASES, THE COMMISSION HAS DIRECTED THAT DETERMINATION OF THE PHYSICAL REQUIREMENTS OF SPECIFIC JOBS MUST BE MATCHED WITH ABILITIES OF THE CLAIMANTS AND OF ALL FUTURE APPLICANTS.

SINCE 1977, THE DEPARTMENT HAS RECEIVED OVER FIFTEEN HUNDRED HANDICAPPER COMPLAINTS. FROM OUR RECORDS, WE KNOW THESE COMPLAINTS, PHYSICAL AND MENTAL, NOW RANK THIRD IN THE TOTAL NUMBER FILED. RACE AND SEX LEAD. BETWEEN TWO-THIRDS AND THREE-QUARTERS OF THESE CLAIMANTS ARE WHITE MALES. APPROXIMATELY 95 PER CENT OF ALL COMPLAINTS ARE IN THE AREA OF EMPLOYMENT, AND MOST INVOLVE FAILURE TO HIRE OR UNFAIR DISMISSAL. A HAND-TABULATED SURVEY SHOWS THE MOST FREQUENTLY CITED HANDICAP IS BACK TROUBLE, FOLLOWED BY COMPLAINTS OF DISCRIMINATION DUE TO VISION, EPILEPSY AND HEART PROBLEMS. OVER ELEVEN HUNDRED OF THESE CASES HAVE BEEN CLOSED. ABOUT FORTY PER CENT OF THESE RESULT IN BENEFICIAL RESOLUTION FOR THE HANDICAPPER.

WHILE THE MICHIGAN CIVIL RIGHTS DEPARTMENT IS CONSTITUTIONALLY MANDATED TO ENFORCE CIVIL RIGHTS LAWS OF THE STATE, THE DEPARTMENT COOPERATES WITH OTHER AGENCIES TO ENCOURAGE COMPREHENSIVE PROTECTION FOR HANDICAPPERS. AMONG THESE IS MICHIGAN'S BUREAU OF REHABILITATION.

THIS BUREAU WORKS WITH BUSINESSES TO ACHIEVE VOLUNTARY JOB PLACEMENT OF HANDICAPPERS. THE BUREAU ALSO ADMINISTERS THE SECOND INJURY PROGRAM, WHICH ENCOURAGES THE HIRING OF PERSONS WITH BACK, HEART, DIABETIC OR EPILEPTIC CONDITIONS. INCENTIVE

TO HIRE IS PROVIDED THROUGH LIMITING LIABILITY FOR AN OCCUPATIONAL INJURY OR ILLNESS TO TWO YEARS. SUBSEQUENT BENEFIT PAYMENTS COME FROM THE SECOND INJURY FUND, TO WHICH ALL EMPLOYERS CONTRIBUTE. THE CIVIL RIGHTS DEPARTMENT ENCOURAGES QUALIFIED CLAIMANTS TO USE THIS PROGRAM TO EXPEDITE THEIR HIRE BY OTHERWISE RELUCTANT EMPLOYERS. DEPARTMENT STAFF ALSO ENCOURAGES RESPONDENTS TO ADMINISTER PHYSICALS PRIOR TO HIRING, IN ORDER TO USE THE SECOND INJURY FUND MORE FREQUENTLY.

IN FEBRUARY, STANDARDS AND PROCEDURES TO IMPLEMENT THE GOVERNOR'S EXECUTIVE DIRECTIVE 1979-4, "CIVIL RIGHTS COMPLIANCE IN STATE AND FEDERAL CONTRACT," WERE AMENDED TO INCLUDE HANDICAPPERS. HANDICAP HAS BEEN DEFINED, CONSISTENT WITH STATE AND FEDERAL REGULATIONS, AND SPECIFIC AFFIRMATIVE STEPS HAVE BEEN OUTLINED, TO INSURE EQUAL EMPLOYMENT OPPORTUNITY AND EQUAL OPPORTUNITY IN THE PROVISION OF SERVICES, ACTIVITIES AND PROGRAMS.

FURTHER, A PROPOSED AMENDMENT TO PUBLIC ACT 220 WOULD REQUIRE A NON-DISCRIMINATION CLAUSE IN ALL STATE CONTRACTS, AND REQUIRE SPECIAL EFFORTS BY EDUCATIONAL INSTITUTIONS TO RECRUIT HANDICAPPED EMPLOYEES AND, IN HIGHER EDUCATION, STUDENTS. THE SIGNIFICANT PORTION OF THIS BILL WOULD BROADEN THE DEFINITION OF MENTAL HANDICAP, NOW COVERING ONLY MENTAL RETARDATION (EXCEPT IN HOUSING), TO COVER THE FULL RANGE OF MENTAL CONDITION. THE DEPARTMENT HAS SUGGESTED THIS EXPANSION BE LIMITED TO "MENTAL

RETARDATION AND MENTALLY RESTORED" DUE TO LIMITED ABILITY OF BOTH PUBLIC AND PRIVATE SECTORS TO DETERMINE PRESENT ABILITY TO PERFORM. EXPANSION OF THE DEFINITION COULD IMPAIR INVESTIGATION AND RESOLUTION OF COMPLAINTS, ALTHOUGH IT WOULD BENEFIT PERSONS WITH A HISTORY OF MENTAL ILLNESS WHO SUFFER EMPLOYMENT DISCRIMINATION.

ENACTMENT OF THE MICHIGAN HANDICAPPERS' CIVIL RIGHTS ACT WAS SLOW IN COMING, AND INADEQUACIES AND AMBIGUITIES CONTINUE TO SURFACE. THIS IS INEVITABLE BECAUSE THIS ACT, MORE THAN ANY OTHER CIVIL RIGHTS LEGISLATION, IS DESIGNED FOR THE INDIVIDUAL. EACH CASE IS UNIQUE, AND THE LAW UNDERGOES CONTINUING SCRUTINY AND INTERPRETATION AS EACH CASE IS LITIGATED OR RESOLVED.

BUT, WEAKNESSES NOTWITHSTANDING, OUR EXPERIENCE WITH THE ACT HAS CONVINCED US THAT HANDICAP DISCRIMINATION CAN BE DEALT WITH EFFECTIVELY BY AN ESTABLISHED CIVIL RIGHTS AGENCY.

## HANDICAPS ALLEGED BY CLAIMANTS FILING HANDICAPPER COMPLAINTS
### OCTOBER 1979 - MAY 1980

| | | |
|---|---|---|
| TOTAL REPORTED HANDICAPS | 222 | |
| Back | 50 | 23.1% |
| Vision | 18 | 8.1% |
| Epilepsy | 15 | 6.8% |
| Heart | 12 | 5.4% |
| Diabetes | 9 | 4.0% |
| Alcoholism | 3 | 1.3% |
| Amputation | 4 | 1.8% |
| High Blood Pressure | 7 | 3.1% |
| Hearing | 4 | 1.8% |
| Asthma | 2 | 0.9% |
| Paralysis | 2 | 0.9% |
| Other/Unknown | 88 | 39.6% |

SOURCE: Unpublished data. Enforcement Bureau,
Michigan Department of Civil Rights

## HANDICAPS ALLEGED BY CLAIMANTS FILING HANDICAPPER COMPLAINTS
### FISCAL YEAR 1978-1979

| | | |
|---|---|---|
| TOTAL REPORTED HANDICAPS | 371 | |
| Back | 99 | 26.7% |
| Vision | 33 | 8.9% |
| Epilepsy | 25 | 6.7% |
| Heart | 20 | 5.3% |
| Diabetes | 12 | 3.2% |
| Alcoholism | 14 | 3.8% |
| Amputation | 9 | 2.4% |
| High Blood Pressure | 9 | 2.4% |
| Hearing | 12 | 3.2% |
| Asthma | 10 | 2.7% |
| Paralysis | 10 | 2.7% |
| Other/Unknown | 118 | 31.8% |

SOURCE: Unpublished data, Enforcement Bureau,
Michigan Department of Civil Rights

PREPARED BY: Research, Evaluation & Data Systems Bureau
Michigan Department of Civil Rights
5/4/80

### HANDICAP COMPLAINTS FILED WITH MDCR

| | First 3 Mos. F.Y. 1979-80 | | F.Y. 1978-79 | | F.Y. 1977-78 | | Last 6 Mos. F.Y. 1976-77 | |
|---|---|---|---|---|---|---|---|---|
| **TOTAL** | 162 | 6.0% | 502 | 8.5% | 575 | 10.4% | 262 | 4.9% |
| **BY NATURE** | | | | | | | | |
| Employment | 155 | 95.7% | 474 | 94.4% | 541 | 94.1% | 253 | 96.6% |
| Housing | 1 | 0.6% | 7 | 1.4% | 6 | 1.0% | 4 | 1.5% |
| Public Accom. | 6 | 3.7% | 13 | 2.6% | 11 | 1.9% | 5 | 1.9% |
| Education | 0 | 0% | 5 | 1.0% | 7 | 1.2% | 0 | 0% |
| Public Serv. | 0 | 0% | 3 | 0.6% | 10 | 1.7% | 0 | 0% |
| **BY TYPE OF COMPLAINT** | | | | | | | | |
| Employment | | | | | | | | |
| Hiring | 35 | 21.6% | 204 | 40.6% | 244 | 42.4% | 161 | 61.5% |
| Working Conditions | 21 | 13.0% | 38 | 7.6% | 56 | 9.7% | 10 | 3.8% |
| Layoff-Recall | 20 | 12.3% | 28 | 5.6% | 35 | 6.1% | 10 | 3.8% |
| Disciplinary Layoff | 5 | 3.1% | 7 | 1.4% | 11 | 1.9% | 3 | 1.1% |
| Training-Upgrading | 4 | 2.5% | 12 | 2.4% | 15 | 2.6% | 3 | 1.1% |
| Discharge | 64 | 39.5% | 161 | 32.1% | 172 | 29.9% | 54 | 20.6% |
| Union Complaint | 4 | 2.5% | 8 | 1.6% | 7 | 1.2% | 6 | 2.3% |
| Other | 2 | 1.2% | 16 | 3.2% | 1 | 0.2% | 6 | 2.3% |
| Housing | | | | | | | | |
| Refusal to Rent/Sell | 0 | 0% | 4 | 0.8% | 3 | 0.5% | 2 | 0.8% |
| Unfair Conditions | 0 | 0% | 0 | 0% | 1 | 0.2% | 0 | 0% |
| Other | 1 | 0.6% | 3 | 0.6% | 2 | 0.3% | 2 | 0.8% |
| Education | | | | | | | | |
| Expulsion | 0 | 0% | 1 | 0.2% | 0 | 0% | 0 | 0% |
| Curriculum | 0 | 0% | 0 | 0% | 1 | 0.2% | 0 | 0% |
| Admission Policy | 0 | 0% | 2 | 0.4% | 1 | 0.2% | 0 | 0% |
| Other | 0 | 0% | 2 | 0.4% | 5 | 0.9% | 0 | 0% |
| Public Accom./Serv. | | | | | | | | |
| Refusal of Service | 4 | 2.5% | 10 | 2.0% | 13 | 2.3% | 4 | 1.5% |
| Unequal Serv. | 2 | 1.2% | 6 | 1.2% | 8 | 1.4% | 1 | 0.4% |
| **BY RACE OF CLAIMANT** | | | | | | | | |
| Black | 28 | 17.3% | 107 | 21.3% | 163 | 28.3% | 41 | 15.6% |
| White | 127 | 78.4% | 369 | 73.5% | 386 | 67.1% | 208 | 79.4% |
| Asian | 0 | 0% | 0 | 0% | 1 | 0.2% | 0 | 0% |
| Latin American | 2 | 1.2% | 7 | 1.4% | 9 | 1.6% | 9 | 3.4% |
| American Indian | 0 | 0% | 1 | 0.2% | 6 | 1.0% | 0 | 0% |
| Other | 5 | 3.1% | 18 | 3.6% | 10 | 1.7% | 4 | 1.5% |
| **BY SEX OF CLAIMANT** | | | | | | | | |
| Male | 112 | 69.1% | 372 | 74.1% | 385 | 67.0% | 208 | 79.4% |
| Female | 50 | 30.9% | 129 | 25.7% | 190 | 33.0% | 54 | 20.6% |
| Organization | 0 | 0% | 1 | 0.2% | 0 | 0% | 0 | 0% |

SOURCE: Unpublished computer printouts, Michigan Department of Civil Rights.

PREPARED BY: Research, Evaluation & Data Systems Bureau
Michigan Department of Civil Rights - May 6, 1980

## HANDICAP COMPLAINTS CLOSED BY MDCR BY TYPE OF CLOSING

| | FIRST 6 MOS. F.Y. 1979-80 | | F.Y. 1978-79 | | F.Y. 1977-78 | |
|---|---|---|---|---|---|---|
| TOTAL | 218 | 7.4% | 462 | 8.8% | 379 | 7.2% |
| Total Adjusted | 89 | 40.8% | 187 | 40.5% | 147 | 38.8% |
| Orders Issued | 8 | 3.7% | 1 | 0.2% | 0 | 0% |
| Adjusted | 15 | 6.9% | 29 | 6.3% | 23 | 6.1% |
| Lack of Evidence, Adj. | 8 | 3.7% | 10 | 2.2% | 16 | 4.2% |
| Withdrawn Adj. | 43 | 19.7% | 101 | 21.9% | 59 | 15.6% |
| Other Adjusted | 15 | 6.9% | 46 | 10.0% | 49 | 12.9% |
| Lack of Evidence | 72 | 33.0% | 139 | 30.1% | 119 | 31.4% |
| Withdrawn | 40 | 18.3% | 63 | 13.6% | 50 | 13.2% |
| Lack of Jurisdiction | 2 | 0.9% | 17 | 3.7% | 18 | 4.7% |
| Other | 15 | 6.9% | 56 | 12.1% | 45 | 11.9% |

SOURCE: Unpublished Computer Printouts, Michigan Department of Civil Rights.

PREPARED BY: Research, Evaluation & Data Systems Bureau
Michigan Department of Civil Rights
May 1980.

Act No. 220
Public Acts of 1976
Approved by Governor
July 28, 1976

STATE OF MICHIGAN
78TH LEGISLATURE
REGULAR SESSION OF 1976

**Introduced by Senators Otterbacher, Corbin, Nelson, Cartwright, Holmes and Kildee**

# ENROLLED SENATE BILL No. 749

AN ACT to define the civil rights of individuals who have handicaps; and to prohibit discriminatory practices, policies, and customs in the exercise of those rights.

*The People of the State of Michigan enact:*

## ARTICLE 1

Sec. 101. This act shall be known and may be cited as the "Michigan handicappers' civil rights act".

Sec. 102. The opportunity to obtain employment, housing and other real estate and full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a handicap is guaranteed by this act and is a civil right.

Sec. 103. As used in this act:

(a) "Commission" means the civil rights commission established by section 29 of article 5 of the state constitution of 1963.

(b) "Handicap" means a determinable physical or mental characteristic of an individual or the history of the characteristic which may result from disease, injury, congenital condition of birth, or functional disorder which characteristic:

(i) for purposes of article 2, is unrelated to the individual's ability to perform the duties of a particular job or position, or is unrelated to the individual's qualifications for employment or promotion.

(ii) for purposes of article 3, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service.

(iii) for purposes of article 4, is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution.

(iv) for purposes of article 5, is unrelated to the individual's ability to acquire, rent, or maintain property.

(c) "Handicapper" means an individual who has a handicap.

(d) "Mental characteristic" is limited to mental retardation which is significantly subaverage general intellectual functioning, and for purposes of article 5 only to a determinable mental condition of an individual or a history of such condition which may result from disease, accident, condition of birth, or functional disorder which constitutes a mental limitation which is unrelated to an individual's ability to acquire, rent, or maintain property.

(e) "Person" includes an individual, agent, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, the state, or any other legal or commercial entity or governmental entity or agency.

(77)

## ARTICLE 2

Sec. 201. As used in this article:

(a) "Employee" does not include an individual employed in domestic service of any person.

(b) "Employer" means a person who has 4 or more employees or a person who as contractor or subcontractor is furnishing material or performing work for the state or a governmental entity or agency of the state and includes an agent of such a person.

(c) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) "Labor organization" includes:

(i) An organization of any kind, an agency or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(ii) A conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization.

(iii) An agent of a labor organization.

Sec. 202. (1) An employer shall not:

(a) Fail or refuse to hire, recruit, or promote an individual because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(b) Discharge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(c) Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive an individual of employment opportunities or otherwise adversely affects the status of an employee because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(d) Fail or refuse to hire, recruit, or promote an individual on the basis of physical or mental examinations that are not directly related to the requirements of the specific job.

(e) Discharge or take other discriminatory action against an individual on the basis of physical or mental examinations that are not directly related to the requirements of the specific job.

(f) Fail or refuse to hire, recruit, or promote an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.

(g) Discharge or take other discriminatory action against an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.

(2) This section shall not apply to the employment of an individual by his parent, spouse, or child.

Sec. 203. An employment agency shall not fail or refuse to refer for employment, or otherwise discriminate against an individual because of a handicap or classify or refer for employment an individual on the basis of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

Sec. 204. A labor organization shall not:

(a) Exclude or expel from membership, or otherwise discriminate against a member or applicant for membership because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position which entitles him to membership.

(b) Limit, segregate, or classify membership, or applicants for membership, or classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive an individual of employment opportunities, or which would limit employment opportunities or otherwise adversely affect the status of an employee or of an applicant for employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(c) Cause or attempt to cause an employer to violate this article.

Sec. 205. An employer, labor organization, or joint labor management committee controlling apprenticeship, on the job, or other training or retraining programs shall not discriminate against an individual because of a handicap in admission to, or employment or continuation in, a program established to provide apprenticeship or other training.

Sec. 206. (1) An employer, labor organization, or employment agency shall not print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by the employment agency, indicating a preference, limitation, specification, or discrimination, based on a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(2) Except as permitted by applicable federal law, an employer or employment agency shall not:

(a) Make or use a written or oral inquiry or form of application that elicits or attempts to elicit information concerning the handicap of a prospective employee for reasons contrary to the provisions or purposes of this act.

(b) Make or keep a record of information or disclose information concerning the handicap of a prospective employee for reasons contrary to the provisions or purposes of this act.

(c) Make or use a written or oral inquiry or form of application that expresses a preference, limitation, or specification based on the handicap of a prospective employee for reasons contrary to the provisions or purposes of this act.

Sec. 207. Nothing in this article shall be interpreted to exempt a person from the obligation to accommodate an employee or applicant with a handicap for employment unless the person demonstrates that the accommodation would impose an undue hardship in the conduct of the business.

Sec. 208. A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to individuals who have handicaps if the plan has been filed with the commission under rules of the commission and the commission has not disapproved the plan.

## ARTICLE 3

Sec. 301. As used in this article:

(a) "Place of public accommodation" means a business, educational institution, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.

(b) "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of the state or a subdivision thereof; a county, city, village, township, or independent or regional district in the state, or a tax exempt private agency established to provide service to the public.

Sec. 302. Except where permitted by law, a person shall not:

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service because of a handicap that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids.

(b) Print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service will be refused, withheld from, or denied an individual because of a handicap that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids, or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of a handicap that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids.

Sec. 303. This article shall not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation, or if it is licensed, chartered, or certified by the state or any of its political subdivisions.

## ARTICLE 4

Sec. 401. As used in this article, "educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, school district, or university, and a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution.

Sec. 402. An educational institution shall not:

(a) Discriminate in any manner in the full utilization of or benefit from the institution, or the services provided and rendered thereby to an individual because of a handicap that is unrelated to the individual's ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids.

(b) Exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, and privileges of the institution, because of a handicap that is unrelated to the individual's ability to utilize and benefit from the institution, or because of the use by an individual of adaptive devices or aids.

(c) Make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or make or keep a record, concerning the handicap of an applicant for admission for reasons contrary to the provisions or purposes of this act.

(d) Print or publish or cause to be printed or published a catalog or other notice or advertisement indicating a preference, limitation, specification, or discrimination based on the handicap of an applicant that is unrelated to the applicant's ability to utilize and benefit from the institution or its services, or the use of adaptive devices or aids by an applicant for admission.

(e) Announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members because of a handicap that is unrelated to the group or members' ability to utilize and benefit from the institution or its services, or because of the use by the members of a group or an individual in the group of adaptive devices or aids.

(f) Develop a curriculum or utilize textbooks and training or learning materials which promote or foster physical or mental stereotypes.

Sec. 403. An educational institution may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to individuals who have handicaps if the plan is filed with the commission, under rules of the commission and the commission has not disapproved the plan.

## ARTICLE 5

Sec. 501. As used in this article:

(a) "Housing accommodation" includes improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arragned, or designed to be used or occupied, as the home or residence of 1 or more persons.

(b) "Immediate family" means a spouse, parent, child, or sibling.

(c) "Real estate broker or salesman" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication, or a person employed by or acting on behalf of any of these persons.

(d) "Real estate transaction" means the sale, exchange, rental, or lease of real property, or an interest therein.

(e) "Real property" includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium.

Sec. 502. An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a handicap that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:

(a) Refuse to engage in a real estate transaction with a person.

(b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.

(c) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person.

(d) Refuse to negotiate for a real estate transaction with a person.

(e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or fail to bring a property listing to a person's attention, or refuse to permit a person to inspect real property.

(f) Print, circulate, post, or mail or cause to be so published a statement, advertisement, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto.

(g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.

Sec. 503. Section 502 shall not apply to the rental of a housing accommodation in a building which contains housing accommodations for not more than 2 families living independently of each other, if the owner or a member of the owner's immediate family resides in 1 of the housing accommodations, or to the rental of a room or rooms in a single housing dwelling by a person if the lessor or a member of the lessor's immediate family resides therein.

Sec. 504. A person to whom application is made for financial assistance or financing in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, or a representative of such a person shall not discriminate against the applicant because of a handicap that is unrelated to the individual's ability to acquire, rent, or maintain property or use a form of application for financial assistance or financing or make or keep a record or inquiry for reasons contrary to the provisions or purposes of this act in connection with applications for financial assistance or financing which indicates, directly or indirectly, a limitation, specification, or discrimination based on a handicap that is unrelated to the individual's ability to acquire, rent, or maintain property.

Sec. 505. Nothing in this article shall be deemed to prohibit an owner, lender, or his agent from requiring that an applicant who seeks to buy, rent, lease, or obtain financial assistance for housing accommodations supply information concerning the applicant's financial, business, or employment status or other information designed solely to determine the applicant's credit worthiness, but not concerning handicaps for reasons contrary to the provisions or purposes of this act.

Sec. 506. A person shall not represent, for the purpose of inducing a real estate transaction from which he may benefit financially or otherwise, that a change has occurred or will or may occur in the composition with respect to handicappers of the owners or occupants in the block, neighborhood, or area in which the real property is located, or represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

Sec. 507. A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to individuals who have handicaps, if the plan is filed with the commission under rules of the commission and the commission has not disapproved the plan.

## ARTICLE 6

Sec. 601. This act shall be administered by the civil rights commission.

Sec. 602. A person or 2 or more persons shall not:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

(b) Aid, abet, incite, compel, or coerce a person to engage in a violation of this act.

(c) Attempt directly or indirectly to commit an act prohibited by this act.

(d) Wilfully interfere with the performance of a duty or the exercise of a power by the commission or any of its authorized representatives.

(e) Wilfully obstruct or prevent a person from complying with this act or an order issued.

Sec. 603. A person shall not violate the terms of an adjustment order made under this act.

Sec. 604. Nothing in this act shall be interpreted as invalidating any other act that establishes or provides programs or services for individuals with handicaps.

Sec. 605. A complaint alleging an act prohibited by this act shall be subject to the same procedures as a complaint alleging an unfair employment practice under Act No. 251 of the Public Acts of 1955, as amended, being sections 423.301 to 423.311 of the Michigan Compiled Laws, or under the existing state law dealing with unfair employment practices if Act No. 251 of the Public Acts of 1951, as amended, is repealed.

Billie S. Farnum

Secretary of the Senate.

T. Thos. Thatcher

Clerk of the House of Representatives.

Approved ..............................................................

..............................................................

Governor.

# *Exhibit No. 10*

Speech delivered by Commissioner
Marilyn McClure at the U.S. Commission
on Civil Rights Issues of Handicapped
Americans: Public Policy Implications
Consultation held May 13-14, 1980 in
Washington, D.C.

I am honored to be here today to share with you some of the enforcement experiences we have had in Minnesota relating to employment discrimination of disabled persons.

Since early 1973 and prior to enactment of the Federal Rehabilitation Act, the Minnesota Human Rights Act has included prohibitions against discrimination on the basis of disability in employment, housing, education, public accommodations, and public services. The law applies to public and private employers who employ at least one person.

In the first year that the law was effective, the department received 12 charges of disability discrimination in employment. This represented 3% of the total employment charges received in 1973. By the end of 1975, 17% of the employment charges filed were allegations involving disability discrimination and, in recent years, allegations of disability discrimination have constituted 19% of employment charges received by the department. An allegation of discrimination because of disability has become the third most frequent type of employment charge filed with the department. Discrimination cases in Minnesota, for the most part, have dealt with individuals who do not claim to be handicapped but whose medical history is used by prospective employers to disqualify them from employment.

Ms. Leslie Milk of Mainstream in her testimony earlier today observed that, until the passage of the Federal Rehabilitation Act of 1973, "handicapped" meant "visibly handicapped". That was and, in some instances, still is the popular conception. However, the Minnesota Legislature did not choose to support this conception in 1973 when it amended the Human Rights Act to prohibit discrimination on the basis of disability. Illnesses commonly perceived to be disabling were also discussed during legislative debate. It is clear that legislative intent in Minnesota was to include a variety of handicapping and disabling conditions within the protection of the law. For this reason, the term "disability" is broadly defined.

"Disability" is defined in the Minnesota Human Rights Act as "a mental or physical condition which constitutes a handicap". Handicap is not defined and according to Minnesota law, undefined words should be construed according to their "common and approved usage". A dictionary definition of "handicap" is "something that hampers a person, a disadvantage; a hindrance". In addition, the Minnesota Human Rights Act contains a section which prescribes that the Act should be construed liberally to accomplish its broad purposes. One purpose of the Act is to secure freedom from employment discrimination against any qualified person. Therefore, the department has agrued that the term "physical handicap" should be broadly construed to include all physical conditions which constitute a disadvantage or hindrance in employment. Minnesota courts have not yet had the opportunity to consider this definition of "handicap". There are two exceptions in Minnesota law to the broad prohibition against discrimination because of disability.

The Human Rights Act provides that "it is a defense to a complaint brought under the Human Rights Act that the person bringing the complaint or action suffers from a disability which poses a serious threat to the health or safety of the disabled person or others." The burden of proving this defense rests with an employer. The department has argued successfully that, for an employer to establish this defense, the employer must show that the danger is present at the time of employment and likely to occur. It is insufficient for an employer to prove that problems may occur at some time in the future.

The second exception under the Act allows an employer to refuse to employ an individual because of the person's disability if the absence of the disability is a bona fide occupational qualification for the job. The department has maintained that in order to establish this defense, an employer must prove that only applicants without a particular disability or disabling condition can satisfactorily perform the job.

The department has established policies and positions with respect to disability discrimination. These positions, for the most part, remain untested. Substantive rules and regulations in employment discrimination have not been promulgated by the department. There is a dearth of discrimination case law under the Minnesota Human Rights Act in the area of disability. But I would like to share with you the particulars of some of the cases that have been considered by Minnesota courts.

Two district court decisions affirmed the department's position that certain medical standards imposed by the City of Minneapolis as part of its employment screening process excluded applicants on the basis of disability in violation of the Minnesota Human Rights Act.

One case involved the disability of pulmonary tuberculosis and two individuals--one employee and one applicant of the City of Minneapolis. In the first instance, the applicant began employment with the city as a clerk typist. On physical examination, the city's physician concluded that she had a lung cavity which might have been caused by tuberculosis. The city's medical standards precluded employment of any person who had had pulmonary tuberculosis, active or quiesent. The employee was terminated.

In the second instance, an applicant was denied employment as a clerk because the city's physician found tubercular cavities in his lungs. The applicant had received chemotherapy and medical test results indicated that the applicant was non-contagious and safe for employment. The city argued that the applicant's tubercular history constituted a serious threat to his health and safety and that of others. The medical test results refuted the city's argument.

The city also asserted that its lung and chest medical standards constituted a bona fide occupational qualification but this argument was rejected on two grounds. First, the city failed to show any factual basis for believing that all or substantially all persons who have lung cavities indicating that they might have had tuberculosis would be unable to perform the jobs of clerk and clerk typist efficiently and without threat to themselves or others. The record indicates that persons with such lung cavities may be employed safely, following chemotherapy treatment, and test results demonstrating the effectiveness of the treatment.

The city also did not show a factual basis to believe that it is impractical or impossible to ascertain which individuals with a lung disability can be safely employed. The department argued that individual determinations about employability must be made. It was demonstrated that such a determination can be made by a doctor knowledgeable about tuberculosis on the basis of laboratory tests and length of chemotherapy treatment. A hearing examiner ruled against the City of Minneapolis.

On appeal to district court, the city argued several points. First the city sought a bona fide occupational qualification test that would be limited regarding disability because the range of activities limited by physical conditions constituting handicaps is much greater than that in sex discrimination cases. But the department argued that the focus of the bona fide occupational qualification exception is not on the range of activities to be limited. It is rather on the negative effects of stereotyping individuals on the basis of a physical characteristic unrelated to ability to perform.

Second, the city argued that a business necessity existed not to hire unreasonably high risk employees. However, the city failed to show that person with a tubercular history are an unreasonably high risk -- that they have a higher turnover rate because of their lung conditions. Also, the city did not show an absence of an acceptable alternative practice other than barring employment of persons with lung conditions. The medical evidence demonstrated that the city could adopt a less discriminatory medical standard requiring less chemotherapy treatment. Thus, the city failed to meet the three-pronged "business necessity" test which provides that: (1) there must be sufficiently compelling purpose for the policy; (2) the policy must effectively carry out that purpose; (3) there must be available no acceptable alternative practices which would better accomplish the business purpose advanced.

Third, the city raised the issue of possible future tubercular problems versus present condition. Both the former employee and the applicant had conditions which had been treated and controlled thus causing no concern for the future.

Fourth, the city urged that where there is a difference in medical opinions, the bona fide occupational qualification standard should be more flexible than in other areas of discrimination. However, the record demonstrates that there was no disagreement among medical experts concerning the pertinent issues in the case. The physician who testified agreed that the former employee and applicant could both perform safely on the job; that laboratory test results, not the presence of lung cavities, were significant in establishing contagiousness; and, that the city standard requiring a year chemotherapy was not necessary. The district court affirmed the decision of the hearing examiner.

In the other district court decision involving exclusionary medical standards, the City of Minneapolis denied employment to an individual because he had a history of a heart attack. The applicant was hired, on a temporary basis, pending the outcome of the physical examination required of all new employees. The city's physician testified before a hearing examiner that the reason the applicant was rejected was that the city's medical standards classified anyone who had a history of myocardial infarction as "not acceptable". The applicant's personal physician testified that he would have no limitations in performing a sedentary job but that there was an "increased risk" of another "coronary event". The city's physician stated that there was a "good probability" of another coronary. An expert on cardiovascular disease testified that medical conditions should be evaluated in conjunction with specific jobs.

The hearing examiner concluded that the city had failed to establish a B.F.O.Q. and ruled that the increased risk of another coronary event is of no consequence since the applicant's ability to perform the job at the time of employment is the proper consideration. The hearing examiner applied the *Weeks* test for B.F.O.Q. in determining that the city had not established a B.F.O.Q. *Weeks v. Southern Bell Telephone Co.*, 408 F. 2d 228 (5th Cir. 1969.)

The city appealed to district court raising the question of whether the hearing examiner had appropriately adopted the *Weeks* test. The city argued that since disabilities are very often not stable conditions, they are different from other protected classes. Therefore, the test for a B.F.O.Q. should not just consider present ability to perform the job, as required under *Weeks*, but should allow for consideration of risks of future incapacity. Such a test would allow an employer to select an applicant showing indication of being able to provide employment of a reasonable duration. The *Weeks* formula requires the employer to show, on a factual basis that: (1) all or substantially all of the members of the protected class are incapable of performing the work; or (2) it is impractical or impossible to determine on an individual basis which persons can and which cannot perform the job. The district court upheld the hearing examiner's use of the *Weeks* formula.

The department has developed arguments and taken positions on disability discrimination that take into account precendents established through litigation of other civil rights cases. Respondents have asserted that well-established civil rights precedents are not generally applicable in the area of disability discrimination. If this assertion were in fact true, the standards established for compliance with human rights laws would be diminished for the protected class of disability. The department has maintained that had a lesser standard been desired, the Minnesota Legislature would have established a separate and distinct statutory protection for disability. The Minnesota Legislature has placed disability discrimination on equal footing with race, sex, marital status, and other protected classes included in the Human Rights Act.

On the administrative hearing level, the department has prevailed in cases involving the disabilities of alcoholism and epilepsy. There are two cases the department is in the midst of litigating that involve exclusionary medical standards. One case, a class action suit against United States Steel Corporation, challenges that employer's practice of excluding applicants with certain lower back conditions from employment as general laborers. The other case questions the job-relatedness of a visual acuity standard imposed by a state agency.

The impact of United State Steel's policies is particularly important in Northern Minnesota. Jobs at U.S. Steel are attractice because benefits and pay are good. In addition, people living in Northern Minnesota have a greater likelihood of having lower back anomalies than does the general population. In this area of the state, Finns make up 21.9% of the population -- a higher percentage than all other ethnic groups. The Finnish population has a very high percentage of lower back abnormality -- perhaps as high as 40%.

The department does have plans -- some already under way -- that will further efforts to eliminate discrimination in employment against disabled individuals. During my tenure as Commissioner of the Minnesota Department of Human Rights, I intend to see that substantive rules and regulations in the are of employment discrimination are promulgated. Rules and regulations presently in effect are strictly administrative and procedural in nature. A few months ago, I created a task force to study and draft rules on employment discrimination as a beginning step to this end.

In concluding my remarks today, I cannot emphasize enough the importance of including disabled persons as a protected class under Title VII of the 1964 Civil Rights Act. A lesser standard for the disabled, than for other protected classes, under federal law, is unacceptable. The Minnesota Legislature adopted this position in 1973. Surely Congress can place disability discrimination on equal footing with race and sex discrimination. I urge you to use your influence as the Commission on Civil Rights and as individual leaders to press Congress to accomplish this task. The efforts to ensure that disabled people have the opportunity to participate fully in the workforce have only just begun. There are many barriers that have yet to be removed.

**MINNESOTA HUMAN RIGHTS ACT**
**As amended through May 1979**

Administered by
Department of Human Rights
240 Bremer Building
Saint Paul, Minnesota 55101

# CHAPTER 363

## MINNESOTA HUMAN RIGHTS ACT

Sec.

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**363.01 DEFINITIONS.** Subdivision 1. **Terms.** For the purposes of this chapter, the words defined in this section have the meanings ascribed to them.

Subd. 2. [Repealed, 1965 c 586 s 6]

Subd. 3. **Board.** "Board" means the state board of human rights.

Subd. 4. **Employment agency.** "Employment agency" means a person or persons who, or an agency which regularly undertakes, with or without compensation, to procure employees or opportunities for employment.

Subd. 5. **Labor organization.** "Labor organization" means any organization that exists wholly or partly for one or more of the following purposes:

(1) Collective bargaining;

(2) Dealing with employers concerning grievances, terms or conditions of employment; or

(3) Mutual aid or protection of employees.

Subd. 6. **National origin.** "National origin" means the place of birth of an individual or of any of his lineal ancestors.

Subd. 7. **Person.** "Person" includes partnership, association, corporation, legal representative, trustee, trustees in bankruptcy, receiver, and the state and its departments, agencies, and political subdivisions.

Subd. 8. **Respondent.** "Respondent" means a person against whom a complaint has been filed or issued.

Subd. 9. **Unfair discriminatory practices.** "Unfair discriminatory practice" means any act described in section 363.03.

Subd. 10. **Discriminate.** The term "discriminate" includes segregate or separate.

Subd. 11. [Repealed 1967 c 897 s 29]

Subd. 12. **Real property.** "Real property" includes real estate, lands, tenements, and hereditaments, corporeal and incorporeal.

Subd. 13. **Real estate broker or salesman.** "Real estate broker or salesman" means, respectively, a real estate broker as defined by Minnesota Statutes, section 82.17, subdivision 4, and a real estate salesman as defined by Minnesota Statutes, section 82.17, subdivision 5.

Subd. 14. **Commissioner.** "Commissioner" means the commissioner of human rights.

Subd. 15. **Employer.** "Employer" means a person who has one or more employees.

Subd. 16. **Party in interest.** "Party in interest" means the complainant, respondent, commissioner or board member.

Subd. 17. **Hearing examiners.** "Hearing examiners" are persons admitted to practice law who are selected by the commissioner to conduct hearings.

Subd. 18. **Public accommodations.** "Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.

Subd. 19. **Public services.** "Public service" means any public facility, department, agency, board or commission, owned, operated or managed by or on behalf of the state of Minnesota, or any subdivision thereof, including any county, city, town, township, or independent district in the state.

Subd. 20. **Educational institutions.** "Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system and a business, nursing, professional, secretarial, technical, vocational school; and includes an agent of an educational institution.

Subd. 21. **Religious or denominational educational institutions.** "Religious or denominational educational institution" means an educational institution which is operated, supervised, controlled or sustained primarily by a religious or denominational organization, or is one which is stated by the parent church body to be and is, in fact, officially related to that church by being represented on the board of the institution, and by providing substantial financial assistance and which has certified, in writing, to the board that it is a religious or denominational educational institution.

Subd. 22. **Charging party.** "Charging party" means a person filing a charge with the commissioner or his designated agent pursuant to section 363.06, subdivision 1.

Subd. 23. **Complainant.** "Complainant" means the commissioner of human rights after he has issued a complaint pursuant to section 363.06.

Subd. 24. **Local commission.** "Local commission" means an agency of a city, created pursuant to law, city charter, or municipal ordinance for the purpose of dealing with discrimination on the basis of race, color, creed, religion, national origin, sex, age, disability, marital status or status with regard to public assistance.

Subd. 25. **Disability.** "Disability" means a mental or physical condition which constitutes a handicap.

Subd. 26. **Department.** "Department" means the department of human rights.

Subd. 27. **Status with regard to public assistance.** "Status with regard to public assistance" means the condition of being a recipient of federal, state or local assistance, including medical assistance, or of being a tenant receiving federal, state or local subsidies, including rental assistance or rent supplements.

Subd. 28. **Age.** "Age" insofar as it refers to any prohibited unfair employment or education practice shall be deemed to protect only those individuals over the age of majority except for section 363.03, subdivision 5, which shall be deemed to protect any individual over the age of 25 years.

Subd. 29. **Sex.** "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

*[1955 c 516 s 3; 1961 c 428 s 1-3; 1967 c 897 s 1-9; 1969 c 975 s 1, 2; 1973 c 123 art 5 s 7; 1973 c 729 s 1; 1976 c 2 s 130; 1977 c 351 s 1; 1977 c 408 s 1]*

**363.02 EXEMPTIONS.** Subdivision 1. **Employment.** The provisions of section 363.03, subdivision 1, shall not apply to:

(1) The employment of any individual

(a) by his parent, grandparent, spouse, child, or grandchild, or

(b) in the domestic service of any person;

(2) A religious or fraternal corporation, association, or society, with respect to qualifications based on religion, when religion shall be a bona fide occupational qualification for employment;

(3) The employment of one person in place of another, standing by itself, shall not be evidence of an unfair discriminatory practice;

(4) An age restriction applied uniformly and without exception to all individuals established by a bona fide apprenticeship program established pursuant to Minnesota Statutes, chapter 178, which limits participation to persons who enter the program prior to some specified age and the trade involved in the program predominantly involves heavy physical labor or work on high structures. Neither shall the operation of a bona fide seniority system which mandates differences in such things as wages, hiring priorities, lay-off priorities, vacation credit, and job assignments based on seniority, be a violation of the age discrimination provisions of section 363.03, subdivision 1, so long as the operation of such system is not a subterfuge to evade the provisions of chapter 363;

(5) With respect to age discrimination, a practice whereby a labor organization or employer offers or supplies varying insurance benefits or other fringe benefits to members or employees of differing ages, so long as the cost to the labor organization or employer for such benefits is reasonably equivalent for all members or employees;

(6) A restriction imposed by state statute, home rule, charter, ordinance, or civil service rule, and applied uniformly and without exception to all individuals, which establishes a maximum age for entry into employment as a peace officer or firefighter.

(7) Nothing in this chapter concerning age discrimination shall be construed to validate or permit age requirements which have a disproportionate impact on persons of any class otherwise protected by section 363.03, subdivision 1 or 5.

It is not an unfair employment practice for an employer, employment agency or labor organization:

(i) to require a person to undergo physical examination for purposes of determining the person's capability to perform available employment; or

(ii) to conduct an investigation as to the person's medical history for the purpose of determining the person's capability to perform available employment; or

(iii) to limit receipt of benefits payable under a fringe benefit plan for disabilities to that period of time which a licensed physician reasonably determines a person is unable to work; or

(iv) to provide special safety considerations for pregnant women involved in tasks which are potentially hazardous to the health of the unborn child, as determined by medical criteria.

Subd. 2. **Housing.** The provisions of section 363.03, subdivision 2, shall not apply to:

(a) rooms in a temporary or permanent residence home run by a nonprofit organization, if the discrimination is by sex or (b) the rental by an owner or occupier of a one-family accommodation in which he resides of a room or rooms in such accommodation to another person or persons if the discrimination is by sex, marital status, status with regard to public assistance or disability. Nothing in this chapter shall be construed to require any person or group of persons selling, renting or leasing property to modify the property in any way, or exercise a higher degree of care for a person having a disability than for a person who does not have a disability; nor shall this chapter be construed to relieve any person or persons of any obligations generally imposed on all persons regardless of any disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations of such lease, agreement or contract.

Subd. 3. **Education.** It is not unfair discriminatory practice for a religious or denominational institution to limit admission or give preference to applicants of the same religion. The provisions of section 363.03, subdivision 5, relating to sex, shall not apply to a private educational institution, or branch or level of a private educational institution, in which students of only one sex are permitted to enroll. Nothing in this chapter shall be construed to require any educational institution to provide any special service to any person because of the disability of such person or to modify in any manner its buildings, grounds, facilities, or admission procedures because of the disability of any such person. Nothing in this chapter shall prohibit an educational institution from discriminating on the basis of academic qualifications or achievements or requiring from applicant's information which relates to academic qualifications or achievements.

Subd. 4. **Public accommodations.** The provisions of section 363.03, subdivision 3, relating to sex, shall not apply to such facilities as restrooms, locker rooms, and other similar places.

Subd. 5. **Disability.** Nothing in this chapter shall be construed to prohibit any program, service, facility or privilege afforded to a person with a disability which is intended to habilitate, rehabilitate, or accommodate that person. It is a defense to a complaint or action brought under this chapter that the person bringing the complaint or action suffers from a disability which in the circumstances poses a serious threat to the health or safety of the disabled person or others. The burden of proving this defense is upon the respondent.

Subd. 6. **Age.** By law or published retirement policy, a mandatory retirement age may be established without being a violation of this chapter if it is established consistent with section 181.81. Nothing in this chapter nor in section 181.81 shall prohibit employee pension and retirement plans from granting pension credit to employees over the age of 65 at a lesser rate than is granted to other employees, provided that in no event may an employee's accumulated pension credits be reduced by continued employment, and further provided that no other state or federal law is violated by the reduced rate of pension credit accrual. Nothing in this chapter shall be construed to prohibit the establishment of differential privileges, benefits, services or facilities for persons of designated ages if (a) such differential treatment is provided pursuant to statute, or (b) **the designated age is greater than 59 years or less than 21 years.**

Subd. 7. **Summer youth employment program.** The provisions of section 363.03, subdivision 1, with regard to age shall not apply to the state summer youth employment program administered by the commissioner of economic security.

[ *1955 c 516 s 4; 1961 c 428 s 4; 1965 c 584 s 1; 1967 c 897 s 10,11; 1973 c 729 s 2; 1975 c 206 s 1; 1977 c 351 s 2-4; 1977 c 408 s 2; 1977 c 430 s 25 subd 1; 1978 c 649 s 4* ]

**363.03 UNFAIR DISCRIMINATORY PRACTICES.** Subdivision 1. **Employment.** Except when based on a bona fide occupational qualification, it is an unfair employment practice:

(1) For a labor organization, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age,

(a) to deny full and equal membership rights to a person seeking membership or to a member;

(b) to expel a member from membership;

(c) to discriminate against a person seeking membership or a member with respect to his hire, apprenticeship, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment; or

(d) to fail to classify properly, or refer for employment or otherwise to discriminate against a person or member.

(2) For an employer, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age,

(a) to refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or

(b) to discharge an employee; or

(c) to discriminate against a person with respect to his hire, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.

(3) For an employment agency, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age,

(a) to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against a person; or

(b) to comply with a request from an employer for referral of applicants for employment if the request indicates directly or indirectly that the employer fails to comply with the provisions of this chapter.

(4) For an employer, employment agency, or labor organization, before a person is employed by an employer or admitted to membership in a labor organization, to

(a) require the person to furnish information that pertains to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability, unless, for the purpose of national security, information pertaining to national origin is required by the United States, this state or a political subdivision or agency of the United States or this state, or for the purpose of compliance with the public contracts act or any rule, regulation or laws of the United States or of this state requiring information pertaining to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability is required by the United States or a political subdivision or agency of the United States; or

(b) cause to be printed or published a notice or advertisement that relates to employment or membership and discloses a preference, limitation, specification, or discrimination based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age.

(5) For an employer, an employment agency or a labor organization, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work.

Subd. 2. **Real property.** It is an unfair discriminatory practice:

(1) For an owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease any real property, or any agent of any of these

(a) to refuse to sell, rent, or lease or otherwise deny to or withhold from any person or group of persons any real property because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability;

(b) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability in the terms, conditions or privileges of the sale, rental or lease of any real property or in the furnishing of facilities or services in connection therewith; or

(c) in any transaction involving real property, to print, circulate or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental or lease of real property, or make any record or inquiry in connection with the prospective purchase, rental, or lease of real property which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability, or any intent to make any such limitation, specification, or discrimination.

(2) For a real estate broker, real estate salesman, or employee, or agent thereof

(a) to refuse to sell, rent, or lease to or offer for sale, rental, or lease any real property to any person or group of persons or to negotiate for the sale, rental, or lease of any real property to any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability, or represent that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or otherwise deny or withhold any real property or any facilities of real property to or from any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability;

(b) to discriminate against any person because of his race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability in the terms, conditions or privileges of the sale, rental or lease of real property or in the furnishing of facilities or services in connection therewith; or

(c) to print, circulate, or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental, or lease of any real property or make any record or inquiry in connection with the prospective purchase, rental or lease of any real property, which expresses directly or indirectly, any limitation, specification or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability or any intent to make any such limitation, specification or discrimination.

(3) For a person, bank, banking organization, mortgage company, insurance company, or other financial institution or lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair or maintenance of any real property or any agent or employee thereof

(a) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability of such person or group of persons or of the prospective occupants or tenants of such real property in the granting, withholding, extending, modifying or renewing, or in the rates, terms, conditions, or privileges of any such financial assistance or in the extension of services in connection therewith;

(b) to use any form of application for such financial assistance or make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability or any intent to make any such limitation, specification, or discrimination;

(c) to discriminate against any person or group of persons who desire to purchase, lease, acquire, construct, rehabilitate, repair or maintain real property in a specific urban or rural area or any part thereof solely because of the social, economic or environmental conditions of the area in the granting, withholding, extending, modifying, or renewing, or in the rates, terms, conditions, or privileges of any such financial assistance or in the extension of services in connection therewith.

(4) For any real estate broker or real estate salesman, for the purpose of inducing a real property transaction from which such person, his firm, or any of its members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, sex, marital status,

status with regard to public assistance or disability of the owners or occupants in the block, neighborhood, or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood, or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other public facilities.

Subd. 3. **Public accommodations.** It is an unfair discriminatory practice:

To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex. It is an unfair discriminatory practice for a taxicab company to discriminate in the access to, full utilization of or benefit from service because of a person's disability.

Subd. 4. **Public services.** It is an unfair discriminatory practice:

To discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of race, color, creed, religion, national origin, disability, sex or status with regard to public assistance.

Subd. 4a. **Standard of care for disabled.** Nothing in subdivisions 3 and 4 shall be construed to require any person to modify property in any way, or exercise a higher degree of care for a person having a disability.

Subd. 5. **Educational institution.** It is an unfair discriminatory practice:

(1) To discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability.

(2) To exclude, expel, or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability.

(3) To make or use a written or oral inquiry, or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, creed, religion, national origin, sex, age, marital status or disability of a person seeking admission, except as permitted by regulations of the department.

Subd. 6. **Aiding and abetting and obstruction.** It is an unfair discriminatory practice for any person:

(1) Intentionally to aid, abet, incite, compel, or coerce a person to engage in any of the practices forbidden by this chapter;

(2) Intentionally to attempt to aid, abet, incite, compel, or coerce a person to engage in any of the practices forbidden by this chapter;

(3) To intentionally obstruct or prevent any person from complying with the provisions of this chapter, or any order issued thereunder, or to resist, prevent, impede, or interfere with the commissioner or any of his employees or representatives in the performance of duty under this chapter.

Subd. 7. **Reprisals.** It is an unfair discriminatory practice for any employer, labor organization, employment agency, lessor, public accommodation, public service or educational institution to intentionally engage in any reprisal against any person because that person:

(1) Opposed a practice forbidden under this chapter or has filed a charge, testified, assisted, or participated in any matter in an investigation, proceeding or hearing under this chapter; or

(2) Associated with a person or group of persons of a different race, color, creed, religion or national origin.

Subd. 8. **Credit, sex discrimination.** It is unfair discriminatory practice to discriminate in the extension of credit to a person because of sex or marital status.

Subd. 9. **Interference with pension rights.** For purposes of subdivision 1 discrimination on account of age shall include acts which interfere with an employee's opportunity to acquire pension credits or pension benefits when the interference cannot be shown to have been based on just cause unrelated to the employee's status with regard to his pension credits or pension benefits.

*[1955 c 516 s 5; 1961 c 428 s 5; 1965 c 585 s 2; 1965 c 586 s 1; 1967 c 897 s 12-16; 1969 c 9 s 80; 1969 c 975 s 3-5; 1973 c 296 s 1; 1973 c 729 s 3; 1974 c 354 s 1; 1975 c 206 s 2-5; 1977 c 351 s 5, 6, 7; 1977 c 403 s 3]*

**363.04 DEPARTMENT OF HUMAN RIGHTS.** Subdivision 1. **Creation; commissioner.** There is established a department of human rights under the direction and supervision of a commissioner who shall be appointed by the governor under the provisions of section 15.06.

Subd. 2. **Deputy commissioner, duties.** There shall be in the department a deputy commissioner, who shall be appointed by the commissioner and shall serve at the pleasure of the commissioner. The deputy commissioner shall act for, and exercise the powers of the commissioner during the absence or disability of the commissioner or in the event of a vacancy in the office of commissioner. The deputy commissioner shall perform such functions, powers and duties as the commissioner shall prescribe from time to time.

Subd. 3. **Oath bond.** Before entering upon the duties of office, the commissioner and the deputy commissioner shall each take and subscribe an oath, give bond to the state of Minnesota to be approved by the governor and filed with the secretary of state in the sum of $10,000, conditioned upon the faithful performance of his duties.

Subd. 4. **Committee, membership, appeals.** There is hereby established within the department a human rights advisory committee. The committee shall serve in an advisory capacity to the commissioner. The committee shall consist of 15 members to be appointed by the governor. Members shall be appointed with due regard to their fitness for the efficient dispatch of the functions, powers and duties vested in and imposed upon the committee. The governor shall designate from time to time one of the members as chairman.

Subd. 4a. **Terms; compensation; removal; vacancies.** The membership terms, compensation, removal of members, and filling of vacancies on the committee shall be as provided in section 15.059.

Subd. 5. **Programs and policies.** The committee shall from time to time recommend programs and policies to the commissioner so as to enable him to better carry out the terms and provisions of chapter 363.

Subd. 6. [Repealed 1976 c 134 s 79]

Subd. 7. [Repealed 1976 c 337 s 3]

Subd. 8. [Repealed 1976 c 337 s 3]

Subd. 9. **Departmental organization.** Subject to other provisions of chapter 363, the commissioner shall have the powers granted by section 15.06 to organize the department.

Subd. 10. **Continuity in operations.** In exercising the functions, powers and duties conferred on and transferred to the commissioner by Laws 1967, chapter 897, the commissioner shall give full consideration to the need for operational continuity of the functions transferred.

*[1955 c 516 s 6; 1961 c 428 s 6; 1965 c 586 s 2; 1967 c 897 s 17; 1969 c 975 s 6 7; 1969 c 1129 art 8 s 14; 1973 c 729 s 4; 1976 c 134 s 68, 69; 1977 c 305 s 38; 1977 c 444 s 17, 18, 19]*

NOTE: Minnesota Statutes 1967, Section 3.922, Subd. 5, includes the chairman of the Indian Affairs Commission as an ex officio member of the state Board of Human Rights. [1969 c 975 s 17]

**363.05 DUTIES OF COMMISSIONER.** Subdivision 1. Formulation of policies. The commissioner shall formulate policies to effectuate the purposes of this chapter and shall:

(1) Exercise leadership under the direction of the governor in the development of human rights policies and programs, and make recommendations to the governor and the legislature for their consideration and implementation;

(2) cooperate and consult with appropriate commissioners and agencies in developing plans and programs to most effectively serve the needs of Indians, to assist women and to fulfill the purposes of chapter 363;

(3) establish and maintain a principal office in St. Paul, and any other necessary branch offices at any location within the state;

(4) meet and function at any place within the state;

(5) employ such hearing examiners, attorneys, clerks and other employees and agents as he may deem necessary and prescribe their duties;

(6) to the extent permitted by federal law and regulation, utilize the records of the department of economic security of the state when necessary to effectuate the purposes of this chapter;

(7) obtain upon request and utilize the services of all state governmental departments and agencies;

(8) adopt suitable rules and regulations for effectuating the purposes of this chapter;

(9) issue complaints, receive and investigate charges alleging unfair discriminatory practices, and determine whether or not probable cause exists for hearing;

(10) subpoena witnesses, administer oaths, take testimony, and require the production for examination of any books or papers relative to any matter under investigation or in question; authorize hearing examiners to exercise the authority conferred by this clause;

(11) attempt, by means of education, conference, conciliation, and persuasion to eliminate unfair discriminatory practices as being contrary to the public policy of the state;

(12) conduct research and study discriminatory practices;

(13) publish and distribute the results of research and study when in the judgment of the commissioner the purposes of chapter 363 will be served thereby;

(14) develop and conduct programs of formal and informal education designed to eliminate discrimination and intergroup conflict by use of educational techniques and programs he deems necessary;

(15) make a written report of the activities of the commissioner to the governor each year and to the legislature by November 15 of each even numbered year;

(16) accept gifts, bequests, grants or other payments public and private to help finance the activities of the department;

(17) create such local and statewide advisory committees as will in his judgment aid in effectuating the purposes of the department of human rights;

(18) appoint a hearing examiner to preside at a public hearing on any complaint;

(19) develop such programs as will aid in determining the compliance throughout the state with the provisions of chapter 363, and in the furtherance of such duties, conduct research and study discriminatory practices based upon race, color, creed, religion, national origin, sex, age, disability, marital status or status with regard to public assistance, or other factors and develop accurate data on the nature and extent of discrimination and other matters as they may affect housing, employment, public accommodations, schools, and other areas of public life;

(20) develop and disseminate technical assistance to persons subject to the provisions of chapter 363, and to agencies and officers of governmental and private agencies;

(21) provide staff services to such advisory committees as may be created in aid of the functions of the department of human rights;

(22) make grants in aid to the extent that appropriations are made available for such purpose in aid of carrying out his duties and responsibilities, but no grant in aid shall be made without first obtaining the advice and consent of the board;

(23) develop educational programs, community organization programs, leadership development programs, motivational programs, and business development programs for the benefit of those persons theretofore and hereafter subject to prejudice and discrimination;

(24) provide information for and direction to a program designed to assist Indian citizens to assume all the rights, privileges, and duties of citizenship; and to coordinate and cooperate with local, state and national and private agencies providing services to the Indian people; and

(25) cooperate and consult with the commissioner of labor and industry regarding the investigation of violations of, and resolution of complaints regarding section 363.03, subdivision 9.

Subd. 2. **Enforcement of subpoena.** Disobedience of a subpoena issued by the commissioner pursuant to subdivision 1 shall be punishable in like manner as a contempt of the district court in proceedings instituted upon application of the commissioner made to the district court of the county where the alleged unfair discriminatory practice in connection with a charge made by a charging party or a complaint filed by the commissioner has occurred or where the respondent resides or has his principal place of business.

*[1955 c 516 s 7; 1961 c 428 s 7; 1967 c 299 s 9; 1967 c 897 s 18; 1969 c 567 s 3; 1969 c 975 s 8; 1969 c 1129 art 10 s 2; 1971 c 24 s 45; 1973 c 254 s 3; 1973 c 729 s 5; 1974 c 406 s 70; 1977 c 351 s 8; 1977 c 408 s 4; 1977 c 430 s 25 subd 1]*

**363.06 GRIEVANCES.** Subdivision 1. **Charge filing.** Any person aggrieved by a violation of this chapter may file a verified charge with the commissioner or [illegible] designated agent, stating the name and address of the person alleged to have committed an unfair discriminatory practice, setting out the details of the practice complained of and other information required by the commissioner. The commissioner within five days of such filing shall serve a copy of the charge upon the respondent personally or by registered or certified mail. Periodically after the filing of a charge but at intervals of no more than 60 days, until the charge is no longer in the jurisdiction of the department the commissioner shall in writing inform the charging party of the status of his charge. A copy of the periodic notice shall be mailed to the respondent.

Subd. 2. **Charge, issuance by commissioner.** Whenever the commissioner has reason to believe that a person is engaging in an unfair discriminatory practice, the commissioner may issue a charge stating in statutory language an alleged violation of a particular section of section 363.03.

Subd. 3. **Time for filing charge.** A charge of an unfair discriminatory practice must be filed within six months after the occurrence of the practice.

Subd. 4. **Inquiry into charge.** When a charge has been filed, the commissioner shall promptly inquire into the truth of the allegations of the charge. The commissioner shall make an immediate inquiry when necessary to prevent a charging party from suffering irreparable loss in the absence of immediate action. On each charge the commissioner shall make a determination as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices; and

(1) If the commissioner shall determine after investigation that no probable cause exists to credit the allegations of the unfair discriminatory practice, the commissioner shall, within ten days of the determination, serve upon the charging party and respondent written notice of the determination. Within ten days after receipt of notice, the charging party may request in writing on forms prepared by the department that the commissioner reconsider his determination. The request shall contain a brief statement of the reasons for and new evidence in support of the request for reconsideration. At the time of submission of the request to the commissioner, the charging party shall deliver or mail to the respondent a copy of the request for reconsideration. The commissioner shall either reaffirm or reverse his determination of no probable cause within 20 days after receipt of the request for reconsideration, and he shall within ten days notify in writing the charging party and respondent of his decision to reaffirm or reverse. A decision by the commissioner that no probable cause exists to credit the allegations of an unfair discriminatory practice shall not be appealed to district court pursuant to section 363.072 or section 15.024.

(2) If the commissioner shall determine after investigation that probable cause exists to credit the allegations of unfair discriminatory practices, the commissioner shall serve on the respondent and his attorney if he is represented by counsel, by first class mail, a notice setting forth a short plain written statement of the alleged facts which support the finding of probable cause and an enumeration of the provisions of law allegedly violated. If the commissioner determines that attempts to eliminate the alleged unfair practices through conciliation pursuant to subdivision 5 have been or would be unsuccessful or unproductive, the commissioner shall issue a complaint and serve on the respondent, by registered or certified mail, a written notice of hearing together with a copy of the complaint, requiring the respondent to answer the allegations of the complaint at a hearing before a hearing examiner at a time and place specified in the notice, not less than ten days after service of said complaint. A copy of the notice shall be furnished to the charging party, the attorney general, and the chairman of the board.

(3) After the commissioner has determined that there is probable cause to believe that a respondent has engaged in an unfair discriminatory practice the commissioner may file a petition in the district court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this chapter, including an order or decree restraining him from doing or procuring an act tending to render ineffectual an order the commissioner may enter with respect to the complaint. The court shall have power to grant temporary relief or a restraining order as it deems just and proper, but no relief or order extending beyond ten days shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice. The Minnesota rules of civil procedure shall apply to an application, and the district court shall have authority to grant or deny such relief sought on conditions as it deems just and equitable. All hearings under this section shall be given precedence as nearly as practicable over all other pending civil actions.

(4) If a lessor, after he has engaged in a discriminatory practice defined in section 363.03, subdivison 2, clause (1), (a), shall lease or rent a dwelling unit to a person who has no knowledge of the practice or of the existence of a charge with respect to the practice, the lessor shall be liable for actual damages sustained by a person by reason of a final order as provided in this section requiring the person to be evicted from the dwelling unit.

Subd. 5. **Attempts to eliminate unfair practices.** The commissioner, in complying with subdivision 4, shall endeavor to eliminate the unfair discriminatory practice through education, conference, conciliation, and persuasion at the place where the practice occurred, or the respondent resides or has his principal place of business.

Subd. 6. **Publication of accounts of cases.** The commissioner may publish an account of a case in which the complaint has been dismissed or the terms of settlement of a case that has been voluntarily adjusted. Except as provided in other sections of this chapter, the commissioner shall not disclose any information concerning his efforts in a particular case to eliminate an unfair discriminatory practice through education, conference, conciliation and persuasion.

*[1955 c 516 s 8; 1961 c 428 s 8; 1965 c 586 s 3; 1967 c 897 s 19; 1969 c 975 s 9, 10; 1973 c 729 s 6-8; 1976 c 301 s 1, 2, 5; 1979 c 156 s 4]*

**363.07** [1955 c 516 s 9; 1961 c 428 s 9-13; 1965 c 586 s 4; Repealed 1967 c 897 s 29]

**363.071 HEARINGS.** Subdivision 1. **Conduct of hearings.** A complaint issued by the commissioner shall be heard as a contested case, except that the report of the hearing examiner shall be binding on all parties to the proceeding and if appropriate shall be implemented by an order as provided for in subdivision 2. The hearing shall be conducted at a place designated by the commissioner, within the county where the unfair discriminatory practice occurred or where the respondent resides or has his principal place of business. The hearing shall be conducted in accordance with Minnesota Statutes 1965, sections 15.0418, 15.0419, 15.0421, 15.0422, and is subject to appeal in accordance with section 15.0424.

Subd. 2. **Determination of discriminatory practice.** The hearing examiner shall make findings of fact and conclusions of law, and if the hearing examiner finds that the respondent has engaged in an unfair discriminatory practice, the hearing examiner shall issue an order directing the respondent to cease and desist from the unfair discriminatory practice found to exist and to take such affirmative action as in the judgment of the examiner will effectuate the purposes of this chapter. Such order shall be a final decision of the department. In all cases the examiner may order the respondent to pay an aggrieved party, who has suffered discrimination, compensatory damages, except damages for mental anguish or suffering, and, in all cases, may also order the respondent to pay an aggrieved party, who has suffered discrimination, punitive damages in an amount not less than $25 nor more than $500. In addition to the aforesaid remedies, in a case involving discrimination in:

(a) employment, the examiner may order the hiring, reinstatement or upgrading of an aggrieved party, who has suffered discrimination, with or without back pay, admission or restoration to membership in a labor organization, or his admission to or participation in an apprenticeship training program, on-the-job-training program, or other retraining program, or any other relief the examiner deems just and equitable.

(b) housing, the examiner may order the sale, lease, or rental of the housing accommodation or other real property to an aggrieved party, who has suffered discrimination, or the sale, lease or rental of a like accommodation or other real property owned by or under the control of the person against whom the complaint was filed, according to terms as listed with a real estate broker, or if no such listing has been made, as otherwise advertised or offered by the vendor or lessor, or any other relief the examiner deems just and equitable.

The examiner shall cause the findings of fact, conclusions of law, and order to be served on the respondent personally, the charging party by registered or certified mail, and shall furnish copies to the attorney general and the commissioner.

Subd. 3. **Dismissal of hearing.** If the examiner makes findings of fact, conclusions of law, and an order in favor of the respondent, such order shall be a final decision of the department.

Subd. 4. **Respondents subject to state licensing or regulatory power.** In the case of a respondent which is subject to the licensing or regulatory power of the state or any political subdivision or agency thereof, if the hearing examiner determines that the respondent has engaged in a discriminatory practice, and if the respondent does not cease to engage in such discriminatory practice, the commissioner may so certify to the licensing or regulatory agency. Unless such determination of discriminatory practice is reversed in the course of judicial review, a final determination is binding on the licensing or regulatory agency. Such agency may take appropriate administrative action, including suspension or revocation of the respondent's license or certificate of public convenience and necessity, if such agency is otherwise authorized to take such action.

Subd. 5. **Public contracts.** In the case of a respondent which is a party to a public contract, if the hearing examiner determines that the respondent has engaged in a discriminatory practice, the commissioner may so certify to the contract letting agency. Unless such finding of a discriminatory practice is reversed in the course of judicial review, a final determination is binding on the contract letting agency and such agency may take appropriate administrative action, including the imposition of financial penalties or termination of the contract, in whole or in part, if such agency is otherwise authorized to take such action.

Subd. 6. **Subpoenas.** After the issuance of a complaint pursuant to section 363.04, subdivision 4, a charging party or a respondent may request that the hearing examiner issue subpoenas requiring the presence of witnesses or the production for examination of books or papers not privileged and relevant to any matter in question at the hearing.

*[1967 c 897 s 20; 1969 c 975 s 11-13; 1973 c 729 s 9; 1976 c 301 s 3]*

**363.072 DISTRICT COURT, REVIEW ORDERS OF PANEL OR EXAMINER.** Subdivision 1. The commissioner or any person aggrieved by a final decision of the department reached after a hearing held pursuant to section 363.071 may seek judicial review pursuant to section 15.0424.

Subd. 2. The district court review proceedings shall conform to section 15.0424, judicial review of agency decisions, and section 15.0425, scope of judicial review.

*[1967 c 897 s 21; 1973 c 729 s 10; 1977 c 408 s 5]*

**363.073 CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS.** Subdivision 1. The commissioner may promulgate rules and regulations, in accordance with chapter 15, for the issuance of certificates of compliance to bidders on public contracts, and shall issue such certificates in accordance with such rules and regulations. No department or agency of the state shall accept any bid or award any contract to any firm or person unless such firm or person has received a certificate of compliance or has pending an application therefor.

Subd. 2. Certificates of compliance may be suspended or revoked, or a pending application for a certificate may be denied, by a panel or examiner, in an order based on a finding that the holder or applicant has committed an unfair discriminatory practice in respect of a public contract; provided, however, that:

(1) any contractor certified to be in compliance with regulations of the federal government in respect of discriminatory practices shall also be certified by the state; and

(2) a contract awarded by a department or agency of the state shall not be terminated or abridged because of suspension, revocation or denial of a certificate based upon an unfair discriminatory practice for which the commissioner's complaint was issued after the date of the contract award; and

(3) in the case of a respondent whose certificate of compliance has been suspended, revoked, or denied, the commissioner shall issue a certificate of compliance in accordance with subdivision 1 within 90 days after he finds that the respondent has ceased engaging in any unfair discriminatory practice.

*[1969 c 975 s 19; 1974 c 527 s 1]*

**363.08** [1955 c 516 s 10; 1961 c 428 s 14; 1965 c 586 s 5; Repealed 1967 c 897 s 29]

**363.09** [1955 c 516 s 11; 1961 c 428 s 15; Repealed 1967 c 897 s 29]

**363.091 ENFORCEMENT.** When a respondent fails or refuses to comply with a final decision of the department, the commissioner may file with the clerk of district court in the judicial district in which the hearing was held a petition requesting the court to order the respondent to comply with the order of the department. Thereupon the court shall issue an order to show cause directed to the respondent why an order directing compliance should not be issued. Notwithstanding the provisions of any law or rule of civil procedure to the contrary, the court shall examine at the hearing on the order to show cause all the evidence in the record and may amend the order of the department in any way the court deems just and equitable. If the panel or examiner has ordered an award of damages pursuant to section 363.071 and if the court sustains or modifies the award, it shall enter judgment on the order or modified order in the same manner as in the case of an order of the district court, as provided in section 546.27.

*[1967 c 897 s 22; 1969 c 975 s 14; 1973 c 729 s 11]*

**363.10 APPEAL TO SUPREME COURT.** The commissioner, or the respondent, may appeal to the supreme court as provided by rule 103.03, clauses (b) and (g) of the rules of civil appellate procedure from an order of the district court issued pursuant to section 363.072, subdivision 1.

*[1955 c 516 s 12; 1965 c 51 s 71; 1967 c 897 s 23; 1976 c 239 s 41]*

**363.101 UNFAIR DISCRIMINATORY PRACTICE A MISDEMEANOR.** In addition to all other remedies provided under this chapter, every person who commits an unfair discriminatory act as set forth in section 363.03, subdivision 3, or aids, abets, incites, compels, or coerces another to do so, shall be guilty of a misdemeanor.

*[1969 c 975 s 18]*

**363.11 CONSTRUCTION.** The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of the civil rights law or of any other law of this state relating to discrimination because of race, creed, color, religion, sex, age, disability, marital status, status with regard to public assistance or national origin; but, as to acts declared unfair by sections 363.03 and 363.123, the procedure herein provided shall, while pending, be exclusive.

*[1955 c 516 s 13; 1973 c 729 s 12; 1977 c 351 s 9]*

**363.115 REFERRAL TO LOCAL COMMISSION.** The commissioner whether or not a charge has been filed under chapter 363 may refer a matter involving discrimination because of race, color, religion, sex, creed, disability, marital status, status with regard to public assistance, national origin or age to a local commission for study and report.

Upon referral by the commissioner, the local commission shall make a report and make recommendations to the commissioner and take other appropriate action within the scope of its powers.

*[1967 c 897 s 24; 1973 c 729 s 13; 1977 c 351 s 10]*

**363.116 TRANSFER TO COMMISSIONER.** A local commission may refer a matter under its jurisdiction to the commissioner.

The charging party has the option of filing a charge either with a local commission or the department. The exercise of such choice in filing a charge with one agency shall preclude the option of filing the same charge with the other agency. At the time a charge comes to the attention of a local agency, the agency or its representative shall inform the charging party of this option, and of his rights under Laws 1967, Chapter 897.

The term "local commission" as used in this section has the same meaning given to the term in section 363.115.

*[1967 c 897 s 25]*

**363.12 DECLARATION OF POLICY.** Subdivision 1. It is the public policy of this state to secure for persons in this state, freedom from discrimination;

(1) In employment because of race, color, creed, religion, national origin, sex, marital status, disability, status in regard to public assistance and age;

(2) In housing and real property because of race, color, creed, religion, national origin, sex, marital status, disability and status in regard to public assistance;

(3) In public accommodations because of race, color, creed, religion, national origin, sex and disability;

(4) In public services because of race, color, creed, religion, national origin, sex, marital status, disability and status in regard to public assistance; and

(5) In education because of race, color, creed, religion, national origin, sex, marital status, disability, status in regard to public assistance and age. Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy. It is also the public policy of this state to protect all persons from wholly unfounded charges of discrimination. Nothing in this chapter shall be interpreted as restricting the implementation of positive action programs to combat discrimination.

Subd. 2. The opportunity to obtain employment, housing, and other real estate, and full and equal utilization of public accommodations, public services, and educational institutions without such discrimination as is prohibited by this chapter is hereby recognized as and declared to be a civil right.

Subd. 3. The department of human rights under the control of the commissioner of human rights is the successor of the state commission against discrimination as it existed immediately prior to July 1, 1967.

Subd. 4. If any provision of Laws 1967, chapter 897 or the application thereof to any person or circumstances is held invalid, the invalidity does not affect the other provisions or applications of Laws 1967, chapter 897 which can be given effect without the invalid provision or application, and to this end the provisions of Laws 1967, chapter 897 are severable.

*[1955 c 516 s 1; 1961 c 428 s 16; 1967 c 897 s 26; 1969 c 975 s 15, 16; 1973 c 729 s 14-15; 1977 c 351 s 11]*

**363.121 DEPARTMENT ATTORNEY.** The attorney general shall be the attorney for the department.

*[1967 c 897 s 27]*

**363.122** [Repealed 1978 c 793 s 98]

**363.123 VIOLATION OF ACT.** It shall be a violation of Laws 1973, chapter 729, for any person furnishing credit service to discriminate against any person who is the recipient of federal, state or local public assistance, including medical assistance, or who is a tenant receiving federal, state or local housing subsidies, including rent assistance or rent supplements, solely because the individual is such a recipient.

*[1973 c 729 s 16]*

**363.13 CITATION.** This chapter shall be known as the Minnesota human rights act.

*[1965 c 516 s 2; 1961 c 428 s 17; 1973 c 729 s 17]*

*Exhibit No. 11*

APPENDIX I - N.Y. STATUTE ON THE HANDICAPPED (SEE FOOTNOTE 11 at p. 239) [illegible] I

# STATE OF NEW YORK

Cal. No. 1552 21020

1979-1980 Regular Sessions

# IN SENATE

May 30, 1979

Assembly Bill No. 8151 introduced by COMMITTEE ON RULES—(at request of M. of A. Koppell, Siegel)—read twice and substituted for Senate Bill No. 5604 by Sen. Flynn—ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

**AN ACT to amend the executive law, in relation to disability to employment under article fifteen**

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision twenty-one of section two hundred ninety-two of the executive law, as added by chapter nine hundred eighty-eight of the laws of nineteen hundred seventy-four and as renumbered by chapter six hundred thirty-two of the laws of nineteen hundred seventy-six, is amended to read as follows:

21. The term "disability" means a physical, mental or medical impairment resulting from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to physical, mental or medical conditions which [are unrelated to the ability to engage in the activities involved in the job or occupation which a person claiming protection of this article shall be seeking] *do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought.*

§ 2. This act shall take effect immediately.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS

**HUGH L. CAREY**
Governor

**WERNER H. KRAMARSKY**
Commissioner

# HUMAN RIGHTS LAW

AS AMENDED THROUGH OCTOBER 26, 1977

STATE DIVISION OF HUMAN RIGHTS
2 WORLD TRADE CENTER NEW YORK CITY 10047

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

(New York State Constitution, Article 1, Section 11, as adopted by Constitutional Convention of 1938 and approved by vote of the people, November 8, 1938.)

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## ARTICLE 15

## HUMAN RIGHTS LAW

Section 290. Purposes of article.
291. Equality of opportunity a civil right.
292. Definitions.
293. Division of human rights.
294. General policies of division.
295. General powers and duties of division.
296. Unlawful discriminatory practices.
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297. Procedure.
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298-a. Application of article to certain acts committed outside of the state of New York.
299. Penal provision.
300. Construction.
301. Separability.

§ 290. **Purposes of article.** 1. This article shall be known as the "Human Rights Law". **Purposes**

2. It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights.

3. The legislature hereby finds and declares that the state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education, training, housing or health care not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. A division in the executive department is hereby created to encourage programs designed to insure that every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the state; to encourage and promote the development and execution by all persons within the state of such state programs; to eliminate and prevent discrimination in employment, in places of public accommodation, resort or amusement, in educational institutions, in public services, in housing accommodations, in commercial space and in credit transactions and to take other, actions against discrimination as herein provided; and the division established hereunder is hereby given general jurisdiction and power for such purposes.

**Division created**

Civil right

§ 291. **Equality of opportunity a civil right.** 1. The opportunity to obtain employment without discrimination because of age, race, creed, color, national origin, sex or marital status is hereby recognized as and declared to be a civil right.

2. The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of age, race, creed, color, national origin, sex or marital status, as specified in section two hundred ninety-six of this article, is hereby recognized as and declared to be a civil right.

3. The opportunity to obtain medical treatment of an infant prematurely born alive in the course of an abortion shall be the same as the rights of an infant born spontaneously.

§ 292. **Definitions.** When used in this article:

Person

1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

Employment agency

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

Labor organization

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with empolyment.

Unlawful discriminatory practice

4. The term "unlawful discriminatory practice" includes only those practices specified in sections two hundred ninety-six and two hundred ninety-six-a of this article.

Employer

5. The term "employer" does not include any employer with fewer than four persons in his employ.

Employee

6. The term "employee" and this article do not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

Commissioner

7. The term "commissioner" unless a different meaning clearly appears from the context, means the state commissioner of human rights; and the term "division" means the state division of human rights created by this article.

National origin

8. The term "national origin" shall, for the purposes of this article, include "ancestry".

Place of public accommod-

9. The term "place of public accommodation, resort or amusement" shall include, except as hereinafter specified, all places included in the meaning of such terms as: inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; wholesale and retail stores and establishments

dealing with goods or services of any kind, dispensaries, clinics, hospitals, bath-houses, swimming pools, laundries and all other cleaning establishments, barber shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof travel or tour advisory services, agencies or bureaus; public halls and public elevators of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants. Such term shall not include public libraries, kindergartens, primary and secondary schools, high schools, academics, colleges and universities, extension courses, and all educational institutions under the supervision of the regents of the state of New York; any such public library, kindergarten, primary and secondary school, academy, college, university, professional school, extension course or other education facility, supported in whole or in part by public funds or by contributions solicited from the general public; or any institution, club or place of accommodation which is in its nature distinctly private.

**Exclusions**

No institution, club, organization or place of accommodation which sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements shall be deemed a private exhibition within the meaning of this section.

**State contest**

10. The term "housing accommodation" includes any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more human beings.

**Housing accommodation**

11. The term "publicly-assisted housing accommodations" shall include all housing accommodations within the state of New York in

**Publicly-assisted housing**

(a) public housing,

(b) housing operated by housing companies under the supervision of the commissioner of housing,

(c) housing constructed after July first, nineteen hundred fifty, within the state of New York

(1) which is exempt in whole or in part from taxes levied by the state or any of its political subdivisions,

(2) which is constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred forty-nine,

(3) which is constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction, or

(4) for the acquistion, construction, repair or maintenance

of which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance,

(d) housing which is located in a multiple dwelling, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and such guaranty or insurance; and

(e) housing which is offered for sale by a person who owns or otherwise controls the sale of ten or more housing accommodations located on land that is contiguous (exclusive of public streets), if (1) the acquisition, construction, rehabilitation, repair or maintenance of such housing accommodations is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and guaranty or insurance, or (2) a commitment, issued by a government agency after July first, nineteen hundred fifty-five, is outstanding that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.

**Multiple dwelling**

12. The term "multiple dwelling", as herein used, means a dwelling which is occupied, as a rule, for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other. A "multiple dwelling" shall not be deemed to include a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families.

**Family**

The term "family", as used herein, means either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. A "boarder", "roomer" or "lodger" residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

**Commercial space**

13. The term "commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended,

arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building, srtucture or portion thereof.

14. The term "real estate broker" means any person, firm or corporation who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates, or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other incumbrance upon or transfer of real estate. In the sale of lots pursuant to the provisions of article nine-a of the real property law, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. Real estate broker

15. The term "real estate salesman" means a person employed by a licensed real estate broker to list for sale, sell or offer for sale, at auction or otherwise, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate, or to negotiate a loan on real estate, or to lease or rent or offer to lease, rent or place for rent any real estate, or who collects or offers or attempts to collect rent for the use of real estate for or in behalf of such real estate broker. Real estate salesman

16. The term "necesary party" means any person who has such an interest in the subject matter of a proceding under this article, or whose rights are so involved, that no complete and effective disposition can be made without his participation in the proceeding; Necessary party

17. The term "parties to the proceeding" means the complainant, respondent, necessary parties and persons permitted to intervene as parties in a proceeding with respect to a complaint filed under this article; Parties to proceeding

18. The term "hearing examiner" means an employee of the division who shall be assigned for stated periods to no other work than the conduct of hearings under this article; Hearing examiner

19. The term "discrimination" shall include segregation and separation. Discrimination

20. The term "credit", when used in this article means the right conferred upon a person by a creditor to incur debt and defer its Credit

payment, whether or not any interest or finance charge is made for the exercise of this right.

**Disability**

21. The term "disability" means a physical, mental or medical impairment resulting from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to physical, mental or medical conditions which are unrelated to the ability to engage in the activities involved in the job or occupation which a person claiming protection of this article shall be seeking.

**Creditor**

22. The term "creditor", when used in this article, means any person or financial institution which does business in this state and which extends credit or arranges for the extension of credit by others. The term creditor includes, but is not limited to, banks and trust companies, private bankers, foreign banking corporations and national banks, savings banks, licensed lenders, savings and loan associations, credit unions, sales finance companies, insurance premium finance agencies, insurers, credit card issuers, mortgage brokers, mortgage companies, mortgage insurance corporations, wholesale and retail merchants and factors.

**Credit reporting bureau**

23. The term "credit reporting bureau", when used in this article, means any person doing business in this state who regularly makes credit reports, as such term is defined by subdivision e of section three hundred seventy-one of the general business law.*

**Regulated creditor**

24. The term "regulated creditor", when used in this article, means any creditor, as herein defined, which has received its charter, license, or organization certificate, as the case may be, from the banking department or which is otherwise subject to the supervision of the banking department.

**Superintendent**

25. The term "superintendent", when used in this article, means the head of the banking department appointed pursuant to section twelve of the banking law.**

**Division of human rights**

**Commissioner head**

§ 293. **Division of human rights.** 1. There is hereby created in the executive department a division of human rights hereinafter in this article called the division. The head of such division shall be a commissioner† hereinafter in this article called the commissioner, who shall be appointed by the governor, by and with the advice and consent of the senate and shall hold office at the pleasure of the governor. The commissioner shall be entitled to his expenses actually and necessarily incurred by him in the performance of his duties.

**Power to reorganize**

2. The commissioner may establish, consolidate, reorganize or abolish such bureaus and other organizational units within the divisions as he determines to be necessary for efficient operation.

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* See page 42 for Section 371 (e) of General Business Law.

** See page 34 for Section 12.1 of Banking Law.

† See Section 169 of the Executive Law, as last amended, re salary payable to the Commissioner.

Policies

§ 294. **General policies of division.** The division shall formulate policies to effectuate the purposes of this article and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes.

Powers, duties, functions

§ 295. **General powers and duties of division.** The division, by and through the commissioner or his duly authorized officer or employee, shall have the following functions, powers and duties:

1. To establish and maintain its principal office, and such other offices within the state as it may deem necessary.

2. To function at any place within the state.

3. To appoint such officers, attorneys, clerks and other employees and agents, consultants and special committees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

4. To obtain upon request and utilize the services of all governmental departments and agencies.

5. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this article, and the policies and practice of the division in connection therewith.

Investigations

6. (a) To receive, investigate and pass upon complaints alleging violations of this article.

Complaints

(b) Upon its own motion, to test and investigate and to make, sign and file complaints alleging violations of this article and to initiate investigations and studies to carry out the purposes of this article.

7. To hold hearings, to provide where appropriate for cross-interrogatories, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the division. The division may make rules as to the issuance of subpoenas which may be issued by the division at any stage of any investigation or proceeding before it.

In any such investigation or hearing, the commissioner, or an officer duly designated by the commissioner to conduct such investigation or hearing, may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.*

Subpoenas

Advisory councils

8. To create such advisory councils, local, regional or state-wide, as in its judgment will aid in effectuating the purposes of this article and of section eleven of article one of the constitution of this state, and the division may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of age, race, creed, color, national origin, sex, or marital status and make recommendations to

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* See page 37 for Section 50.20 of the Criminal Procedure Law.

the division for the development of policies and procedures in general and in specific instances. The advisory councils also shall disseminate information about the division's activities to organizations and individuals in their localities. Such advisory councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the division may make provision for technical and clerical assistance to such councils and for the expenses of such assistance.

**Publicizing article**

9. To develop human rights plans and policies for the state and assist in their execution and to make investigations and studies appropriate to effectuate this article and to issue such publications and such results of investigations and research as in its judgment will tend to inform persons of the rights assured and remedies provided under this article, to promote good-will and minimize or eliminate discrimination because of age, race, creed, color, national origin, sex or marital status.

**Reports**

10. To render each year to the governor and to the legislature a full written report of all its activities and of its recommendations.

**Tensions**

11. To inquire into incidents of and conditions which may lead to tension and conflict among racial, religious and nationality groups and to take such action within the authority granted by law to the division, as may be designed to alleviate such conditions, tension and conflict;

**Technical assistance**

12. To furnish any person with such technical assistance as the division deems appropriate to further compliance with the purposes or provisions of this article;

**Local agencies**

13. To promote the creation of human rights agencies by counties, cities, villages or towns in circumstances the division deems appropriate.

**Gifts, grants to**

14. To accept, with the approval of the governor, as agent of the state, any grant, including federal grants, or any gift for any of the purposes of this article. Any moneys so received may be expended by the division to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article;

15. To adopt an official seal.

**Concurrent jurisdiction with N.Y.C. Commission in blockbusting**

16. To have concurrent jurisdiction with the New York city commission on human rights over the administration and enforcement of title C of chapter one of the administrative code of the city of New York.*

§ 296. **Unlawful discriminatory practices.** 1. It shall be an unlawful discriminatory practice:

**Employers**

(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sex, or disability, or marital status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

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* See page 43 for New York City Administrative Code, Chap. 1, Title C.

Employment agencies

(b) For an employment agency to discriminate against any individual because of age, race, creed, color, national origin, sex, or disability or marital status, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

Labor organizations

(c) For a labor organization, because of the age, race, creed, color, national origin, sex, or disability or marital status of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

Advertisements, inquiries

Exception—civil service

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color or national origin, sex, or disability or marital status, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this paragraph nor any provision of this chapter or other law shall be construed to prohibit the department of civil service or the department of personnel of any city containing more than one county from requesting information from applicants for civil service examinations concerning any of the aforementioned characteristics for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to insure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, creed, color, national origin, sex, or disability or marital status.

Retaliation

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

(f) Nothing in this subdivision shall affect any restrictions upon the activities of persons licensed by the state liquor authority with respect to persons under twenty-one years of age.

Training programs

1-a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

Criteria

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review;

Admission

(b) To deny to or withhold from any person because of race, creed, color, national origin, sex, or disability, or marital status, the right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, executive training program, or other occupational training or retraining program;

**Terms**

(c) To discriminate against any person in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color, national origin, sex, or disability or marital status;

**Advertisements, inquiries**

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sex, or disability or marital status, or any intention to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

**Places of public accommodation**

2. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color, national origin, sex, or disability or marital status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, sex, or disability or marital status, or that the patronage or custom thereat of any person of or purporting to be of any particular race, creed, color, national origin, sex or marital status, or having a disability is unwelcome, objectionable or not acceptable, desired or solicited.

**Exemptions**

(b) Nothing in this subdivision shall be construed to prevent the barring of any person, because of the sex of such person, from places of public accommodations, resort or amusement if the division grants an exemption based on bona fide considerations of public policy; nor shall this subdivision apply to the rental of rooms in a housing accommodation which restricts such rental to individuals of one sex.

**Publicly-assisted housing**

2-a. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

**Rental**

(a) To refuse to rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color, disability, national origin, age or marital status of such person or persons.

**Terms**

(b) To discriminate against any person because of his race, creed, color, disability, national origin, age or marital status in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

Inquiries, records

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color, disability, national origin, age or marital status of a person seeking to rent or lease any publicly-assisted housing accommodation.

Age exception

(d) Nothing in this subdivision shall restrict the consideration of age in the rental of publicly-assisted housing accommodations if the division grants an exemption based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups.

3-a. It shall be an unlawful discriminatory practice:

Age discrimination in employment

(a) For an employer or licensing agency, because an individual is between the ages of eighteen and sixty-five, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment.

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(b) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination respecting individuals between the ages of eighteen and sixty-five, or any intent to make any such limitation, specification or discrimination.

Retaliation

(c) For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

Physical disability

But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivision be deemed to preclude the varying of insurance coverages according to an employee's age.

Retirement plans

The provisions of this subdivision shall not affect any restriction upon the activities of persons licensed by the state liquor authority with respect to persons under twenty-one years of age.

Blockbusting

3-b. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof or any other individual, corporation, partnership or organization for the purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin or marital status of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in the criminal or anti-social behavior, or a decline in the quality or schools or other facilities.*

**Non-sectarian education institution**

4. It shall be an unlawful discriminatory practice for an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law to deny the use of its facilities to any person otherwise qualified, by reason of his race, color, religion, disability, national origin, age or marital status.

**Housing accommodations**

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

**Rental**

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin, sex, or disability or marital status of such person or persons.

**Terms**

(2) To discriminate against any person because of his race, creed, color, national origin, sex, or disability or marital status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

**Advertisements, inquiries**

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sex, or disability or marital status, or any intent to make any such limitation, specification or discrimination.

**Exemptions**

The provisions of this paragraph (a) shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations, (2) to the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex or (3) to the rental of a room or rooms in a housing accomodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or members of his family reside in such housing accommodation.

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* See Section 2 of Chapter 493 of the Laws of 1970 which amended Chapter 1070 of the Laws of 1969, through which this subdivision 3-b (former number 3) was added, as follows: "None of the amendments made by this act shall apply to the city of New York".

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space: **Land or commercial space**

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons such commercial space because of the age of such person or persons; or such land or commercial space because of the race, creed, color, national origin, sex, or disability or marital status of such person or persons. **Rental**

(2) To discriminate against any person because of his race, creed, color, national origin, sex, or disability or marital status in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or because of his age in relation to such commercial space: or in the furnishing of facilities or services in connection therewith. **Terms**

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sex, or disability or marital status, or in relation to commercial space as to age; or any intent to make any such limitations, specification or discrimination. **Advertisements, inquiries**

(c) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof: **Real estate brokers**

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space to any person or group of persons because of the race, creed, national origin, sex, or disability or marital status of such person or persons, or in relation to commercial space because of the age of such person or persons or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, creed, color, national origin, sex, or disability or marital status of such person or persons or in relation to commercial space because of the age of such person or persons. **Services**

**Advertisements, inquiries**

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sex, or disability or marital status, or in relation to commercial space as to age; or any intent to make any such limitation, specification or discrimination.

**Real estate boards**

(d) It shall be an unlawful discriminatory practice for any real estate board, because of the race, creed, color, national origin, age, sex, or disability or marital status of any individual who is otherwise qualified for membership, to exclude or expel such individual from membership, or to discriminate against such individual in the terms conditions and privileges of membership in such board.

**Discrimination against the blind**

**Nursing, convalescent and other adult homes**

**Definition of blind person**

(e) It shall be an unlawful discriminatory practice for the owner, proprietor or managing agent of, or other person having the right to provide care and services in, a private proprietary nursing home,* convalescent home, or home for adults, or in intermediate care facility, as defined in section two of the social services law, heretofore constructed, or to be constructed, or any agent or employee thereof, to refuse to provide services and care in such home or facility to any individual or to discriminate against any individual in the terms, conditions, and privileges of such services and care solely because such individual is a blind person. For purposes of this paragraph, a "blind person" shall mean a person who is registered as a blind person with the commission for the visually handicapped and who meets the definition of a "blind person" pursuant to section three of chapter four hundred fifteen of the laws of nineteen hundred thirteen entitled "An act to establish a state commission for improving the condition of the blind of the state of New York, and making an appropriation therefor". ‡

(f) The provisions of this subdivision, as they relate to age, shall not apply to persons under the age of eighteen years.

**Aiding, abetting coercing**

6. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

**Retaliation**

7. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

**Violation of conciliation agreements**

8. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section two hundred ninety-seven of this article to violate the terms of such agreement.

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* See also on employees 48 for Section 2801-d of the Public Health Law.

‡ See page 54 for Section 3 of Chapter 415 of the Laws of 1913, as amended (Unconsolidated Laws §8704).

**Volunteer firemen**

9. (a) It shall be an unlawful discriminatory practice for any fire department or fire company therein, through any member or members thereof, officers, board of fire commissioners or other body or office having power of appointment of volunteer firemen, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, to deny to any individual membership in any volunteer fire department or fire company therein, or to expel or discriminate against any volunteer member of a fire department or fire company therein, because of the race, creed, color or national origin of such individual.

**Boards of Fire Commissioners**

(b) Upon a complaint to the division, as provided for under subdivision one of section two hundred ninety-seven of this article, the board of fire commissioners shall be made a party respondent and in the event the commissioner finds that an unlawful discriminatory practice has been engaged in, the board of fire commissioners shall be included in any order, under subdivision four of section two hundred ninety-seven of this article, to be served on any or all respondents requiring such respondent or respondents to cease and desist from such unlawful discriminatory practice and to take affirmative action. The board of fire commissioners shall have the duty and power to appoint as a volunteer fireman, notwithstanding any other statute or provision of law or by-law of any volunteer fire company, any individual whom the commissioner has determined to be the subject of an unlawful discriminatory practice under the subdivision.

**Religious observance by employees**

10. (a) It shall be an unlawful discriminatory practice for any employer to prohibit, prevent or disqualify any person from, or otherwise to discriminate against any person in, obtaining or holding employment, because of his observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of his religion.

**Exceptions**

(b) Except as may be required in an emergency or where his personal presence is indispensable to the orderly transaction of business, no person shall be required to remain at his place of employment during any day or days or portion thereof that, as a requirement of his religion, he observes as his sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his place of employment and his home, provided however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.

**Procedure**

(c) This subdivision shall not be construed to apply to any position dealing with health or safety where the person holding such position must be available for duty whenever needed, or to any position or class of positions the nature and quality of the duties of which are such that the personal presence of the holder of such position is regularly essential on any particular day or days or portion thereof for the normal performance of such duties with respect to any applicant therefor or holder thereof who, as a requirement of his religion, observes such day or days or portion thereof as his sabbath or other holy day. In the case of any employer other than the state, any of its political subdivision or any school district, this subdivision shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue economic hardship to the employer. In any proceeding in which the applicability of this subdivision is in issue, the burden of proof shall be upon the employer. If any question shall arise whether a particular position or class of positions is excepted from this subdivision by this paragraph, such question may be referred in writing by any party claiming to be aggrieved, in the case of any position of employment by the state or any of its political subdivisions, except by any school district, to the civil service commission, in the case of any position of employment by any school district, to the commissioner of education, who shall determine such question and in the case of any other employer, a party claiming to be aggrieved may file a complaint with the division pursuant to this article. Any such determination by the civil service commission shall be reviewable in the manner provided by article seventy-eight of the civil practice law and rules and any such determination by the commissioner of education shall be reviewable in the manner and to the same extent as other determinations of the commissioner under section three hundrd ten of the education law.*

**Exemptions of religious organizations**

11. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

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* Statement of legislative purpose. It has long been the policy of this state that every individual is guaranteed the right to obtain employment free from discrimination because of his religion. It is the finding of the legislature that, in accordance with this policy, no individual should be prohibited, prevented or disqualified from, or discriminated against in obtaining or holding public employment because of his observance of any particular day or days or portion thereof as his sabbath or other holy day as a requirement of his religion. Questions have recently been raised, however, as to whether the provisions of the law against discrimination and other laws are sufficiently clear to protect the interests of individuals holding or seeking public employment who observe any particular day or days or portion thereof as a sabbath or other holy day as a requirement of their religion. This act is therefore enacted to clarify the existence of this right and to provide specific assurance of it, and should in no way be construed to limit the rights assured by the provisions of the law against discrimination or any other law, rule or regulation. It is the intention of the legislature that this act shall be construed liberally to effectuate the purposes for which it is enacted. (Section 1 of Chap. 667 of Laws of 1967.)

**Promotion of minority employment**

12. Notwithstanding the provisions of subdivisions one, one-a and three-a of this section, it shall not be an unlawful discriminatory practice for an employer, employment agency, labor organization or joint labor-management committee to carry out a plan, approved by the division, to increase the employment of members of a minority group (as may be defined pursuant to the regulations of the division) which has a state-wide unemployment rate that is disproportionately high in comparison with the state-wide unemployment rate of the general population. Any plan approved under this subdivision shall be in writing and the division's approval thereof shall be for a limited period and may be rescinded at any time by the division.

**Boycotts, blacklisting prohibited**

13. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist, or to refuse to buy from, sell to or trade with, any person, because of the race, creed, color, national origin or sex of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes; or

(b) Boycotts to protest unlawful discriminatory practices.

**Discriminatio against blind with guide do**

14. It shall be an unlawful discriminatory practice for any person engaged in any activity covered by this section to discriminate against a blind person on the basis of his use of a guide dog.*

**Criminal action termin favoring accu —employment licensing, insurance and credit—no inquiry or rejection**

14. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law,** in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons.†

**Exception**

**Ex-offenders not barred in employment licensing if Correction L violated**

15. It shall be an unlawful discriminatory practice for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to deny any license or empolyment to any individual by reason of his having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based upon his having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-a of the correction law.‡

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* As added by Chap. 177 of Laws of 1976.

** See p. 38 Criminal Procedure Law, § 160.50.

† As added by Chapter. 877 of Laws of 1976.

‡ See p. 35 Correction Law, Art. 23-A.

**Creditor**

§ 296-a. **Unlawful discriminatory practices in relation to credit.** 1. It shall be an unlawful discriminatory practice for any creditor or any officer, agent or employee thereof:

**Credit for housing, land or commercial space**

**Race, creed, color, national origin, sex or marital status—discrimination prohibited**

a. In the case of applications for credit with respect to the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space to discriminate against any such applicant because of the race, creed, color, national origin, age, sex, marital status or disability of such applicant or applicants or any member, stockholder, director, officer or employee of such applicant or applicants, or of the prospective occupants or tenants of such housing accommodation, land or commercial space, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such credit.

**Terms in any form of credit**

b. To discriminate in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any form of credit, on the basis of race, creed, color, national origin, age, sex, marital status or disability.

**Inquiries—general**

c. To use any form of application for credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, age, sex, marital status or disability.

**Inquiries re childbreaing**

d. To make any inquiry of an applicant concerning his or her capacity to reproduce, or his or her use or advocacy of any form of birth control or family planning.

**Discounting of income**

e. To refuse to consider sources of an applicant's income or to subject an applicant's income to discounting, in whole or in part, because of an applicant's race, creed, color, national origin, age, sex, marital status, childbearing potential or disability.

2. Without limiting the generality of subdivision one, it shall be considered discriminatory if, because of an applicant's or class of applicants' race, creed, color, national origin, age, sex, marital status or disability, (i) an applicant or class of applicants is denied credit in circumstances where other applicants of like overall credit worthiness are granted credit, or (ii) special requirements or conditions, such as requiring co-obligors or reapplication upon marriage, are imposed upon an applicant or class of applicants in circumstances where similar requirements or conditions are not imposed upon other applicants of like overall credit worthiness.

**Permissible activity**

3. It shall not be considered discriminatory if credit differentiations or decisions are based upon factually supportable, objective differences in applicants' overall credit worthiness, which may include reference to such factors as current income, assets and prior credit history of such applicants, as well as reference to any other relevant factually supportable data; provided, however, that no creditor shall consider, in evaluating the credit worthiness of an applicant, aggregate statistics or assumptions relating to race, creed, color, national origin, sex, marital status or disability, or to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future.

3-a. It shall not be an unlawful discriminatory practice to consider age in determining credit worthiness when age has a demonstrable and statistically sound relationship to a determination of credit worthiness.

**Reasons for rejection**

4. a. If so requested by an applicant for credit, a creditor shall furnish such applicant with a statement of the specific reasons for rejection of the applicant's application for credit.

**Separate credit history**

b. If so requested in writing by an individual who is or was married, a creditor or credit reporting bureau shall maintain in its records a separate credit history for any such individual. Such separate history shall include all obligations as to which such bureau has notice with respect to which any such person is or was individually or jointly liable.

**Liability of spouses**

5. No provision of this section providing spouses the right to separately apply for credit, borrow money, or have separate credit histories maintained shall limit or foreclose the right of creditors, under any other provision of law, to hold one spouse legally liable for debts incurred by the other.

**Complaint against regulated creditors**

**Election of remedies**

6. Any person claiming to be aggrieved by an unlawful discriminatory practice engaged in by a regulated creditor, in lieu of the procedure set forth in section two hundred ninety-seven of this chapter, may file a verified complaint with the superintendent, as provided hereinafter; provided however, that the filing of a complaint with either the superintendent or the division shall bar subsequent recourse to the other agency, as well as to any local commission on human rights, with respect to the grievance complained of.

7. In the case of a verified complaint filed with the superintendent the following procedures shall be followed:

**Procedure before Superintendent**

**Dismissal or determination of probable cause**

**Conciliation**

a. After receipt of the complaint, the superintendent shall make a determination within thirty days of whether there is probable cause to believe that the person named in the complaint has engaged in or is engaging in an unlawful discriminatory practice. If the superintendent determines there is no such probable cause, the complaint shall be dismissed. If the superintendent determines that there is such probable cause, he shall attempt to resolve such complaint by conference and conciliation. If conciliation is achieved, the terms shall be recorded in a written agreement signed by the creditor and complainant, a copy of which shall be forwarded to the commissioner.

**Hearing**

**Notice**

**Counsel**

**Evidence; subpoenas**

b. If conciliation is not achieved, the superintendent or his designated represntative shall conduct a hearing with respect to the alleged violation of this section. All interested parties shall be entitled to adequate and timely notice of the hearing. Such parties shall have the right to be represented by counsel or by other representatives of their own choosing; to offer evidence and witnesses in their own behalf and to cross-examine other parties and witnesses; to have the power of subpoena exercised in their behalf; and to have access to a written record of such hearing. The superintendent or his representative shall not be bounded by the strict rules of evi-

Record

Decision

dence prevailing in courts of law or equity. The testimony taken shall be under oath and a record shall be made of the proceedings. A written decision shall be made by the superintendent or his designated representative separately setting forth findings of fact and conclusions of law. A copy of such decision shall be forwarded to the commissioner.

Order of Superintendent

c. If the superintendent finds that a violation of this section has occurred, the superintendent shall issue an order which shall do one or more of the following:

Fines

(1) Impose a fine in an amount not to exceed ten thousand dollars for each violation, to be paid to the people of the state of New York;

Compensatory damages

(2) award compensatory damages to the person aggrieved by such violation;

Practice discontinued

(3) require the regulated creditor to cease and desist from such unlawful discriminatory practices;

Affirmative action

(4) require the regulated creditor to take such further affirmative action as will effectuate the purposes of this section, including, but not limited to, granting the credit which was the subject of the complaint.

Judicial review

d. Any complainant, respondent or other person aggrieved by any order or final determination of the superintendent may obtain judicial review thereof.

Order under Banking Law

8. Where the superintendent makes a determination that a regulated creditor has engaged in or is engaging in discriminatory practices, the superintendent is empowered to issue appropriate orders to such creditor pursuant to the banking law.* Such orders may be issued without the necessity of a complaint being filed by an aggrieved person.

Applications to Banking Board or Superintendent

Certification of compliance with section

If violation shown, remedial action to be described

9. Whenever any creditor makes application to the superintendent or the banking board to take any action requiring consideration by the superintendent or such board of the public interest and the needs and convenience thereof, or requiring a finding that the financial responsibility, experience, charter, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently, such creditor shall certify to the superintendent compliance with the provisions of this section. In the event that the records of the banking department show that such creditor has been found to be in violation of this section, such creditor shall describe what action has been taken with respect to its credit policies and procedures to remedy such violation or violations. The superintendent shall in approving the foregoing applications and making the foregoing findings, give appropriate weight to compliance wtih this section.

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* See page 34 for Section 39 of the Banking Law

**Time for filing complaint**

10. Any complaint filed with the superintendent pursuant to this section shall be so filed within one year after the occurrence of the alleged unlawful discriminatory practice.

**Rules of Superintendent**

11. The superintendent is hereby empowered to promulgate rules and regulations hereunder to effectuate the purposes of this section.

12. The provisions of this section, as they relate to age, shall not apply to persons under the age of eighteen years.

**Filing of complaints**

**Official complaints**

**Objecting employees**

§ 297. **Procedure.** 1. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or his attorney-at-law, make, sign and file with the division a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the division. The industrial commissioner or the attorney-general or the division upon its own motion may, in like manner, make, sign and file such complaint. In connection with the filing of such complaint, the attorney-general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this article, may file with the division a verified complaint asking for assistance by conciliation or other remedial action.

**Investigations by division**

**Determination of jurisdiction and probable cause**

**Dismissal of complaint**

2. After the filing of any complaint, the division shall promptly serve a copy thereof upon the respondent and all persons it deems to be necessary parties, and make prompt investigation in connection therewith. Within one hundred eighty days after a complaint is filed, the division shall determine whether it has jurisdiction and, if so, whether there is probable cause to believe that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice. If it finds with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the commissioner shall issue and cause to be served on the complaint an order dismissing such allegations of the said complaint as to such respondent.

**Conciliation**

**Consent decree**

**Disclosure**

3.a. If in the judgment of the division the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate such unlawful discriminatory practice by conference, conciliation and persuasion. Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the division and the respondent, including a provision for the entry in the supreme court in any county in the judicial district where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or where the housing accommodation, land or commercial space specified in the complaint is located, of a consent decree embodying the terms of the conciliation agreement. The division shall not disclose what has transpired in the course of such endeavors.

**Terms of conciliation**

**Complainant's objections**

b. If the respondent and the division agree upon conciliation terms the division shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within fifteen days after its service upon him, the division shall issue an order embodying such conciliation agreement. If the complainant objects to the agreement he shall serve a specification of his objections upon the division within such period. Unless such objections are met or withdrawn within ten days after service thereof, the division shall notice the complaint for hearing.

**Dismissal**

c. Notwithstanding any other provisions of this section, the division may, where it finds the terms of a conciliation agreement to be in the public interest, execute such agreement, and limit the hearing to the objections of the complainant. If, however, the division finds that the complainant's objections to the proposed conciliation agreement are without substance or that noticing the complaint for hearing would be otherwise undersirable, the division may in its unreviewable discretion, at any time prior to a hearing before a hearing examiner dismiss the complaint on the grounds of administrative convenience.

**Service of conciliation agreement**

d. If a conciliation agreement is entered into, the division shall serve a copy of the order embodying such agreement upon all parties to the proceeding, and if a party to any such proceeding is a regulated creditor, the division shall forward a copy of the order embodying such agreement to the superintendent.

**Public hearing**

**Presentation of case**

4.a. Within two hundred seventy days after a complaint is filed, or within one hundred twenty days after the board has reversed and remanded an order of the division dismissing a complaint for lack of jurisdiction or for want of probable cause, unless the division has dismissed the complaint or issued an order stating the terms of a conciliation agreement not objected to by the complainant, the division shall cause to be issued and served a written notice, together with a copy of such complaint, as the same may have been amended, requiring the respondent or respondents to answer the charges of such complaint and appear at a public hearing before a hearing examiner at a time not less than five nor more than fifteen days after such service and at a place to be fixed by the division and specified in such notice. The place of any such hearing shall be the office of the division or such other place as may be designated by the division. The case in support of the complaint shall be presented by one of the attorneys or agents of the division and, at the option of the complainant, by his attorney. With the consent of the division, the case in support of the complainant may be presented solely by his attorney. No person who shall have previously made the investigation, engaged in a conciliation proceeding or caused the notice to be issued shall act as a hearing examiner in such case. Attempts at conciliation shall not be received in evidence. At least two business days prior to the hearing the respondent shall, and any necessary party may, file a written answer to the complaint, sworn to subject to the

**Answer**
**Testimony**
**Parties**
**Amendment**
**Evidence**

penalties of perjury, with the division and serve a copy upon all other parties to the proceeding. A respondent who has filed an answer, or whose default in answering has been set aside for good cause shown may appear at such hearing in person or otherwise, with or without counsel, cross examine witnesses and the complainant and submit testimony. The complainant and all parties shall be allowed to present testimony in person or by counsel and cross examine witnesses. The hearing examiner may in his discretion permit any person who has a substantial personal interest to intervene as a party, and may require that necessary parties not already parties be joined. The division or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent and any other party shall have like power to amend his answer. The hearing examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and a record made.

**Default**

b. If the respondent fails to answer the complaint, the hearing examiner designated to conduct the hearing may enter the default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside only for good cause shown upon equitable terms and conditions.

**Order after hearing**
**Cease and desist order—terms**
**Order of dismissal**

c. Within one hundred eighty days after the commencement of such hearing, a determination shall be made and an order served as hereinafter provided. If, upon all the evidence at the hearing, the commissioner shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the commissioner shall state findings of fact and shall issue and cause to be served on such respondent an order, based on such findings and setting them forth, and including such of the following provisions as in the judgment of the division will effectuate the purposes of this article: (i) requiring such respondent to cease and desist from such unlawful discriminatory practice; (ii) requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatment or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, granting the credit which was the subject to any complaint; (iii) awarding of compensatory damages to the person aggrieved by such practice; (iv) requiring payment to the state of profits obtained by a respondent through the commission of unlawful discriminatory acts described in subdivision three-be of section two hundred ninety-six of this article; and (v) requiring a report of the manner of compliance. If, upon all the evidence, the commissioner shall find that a respondent has not engaged in any such unlawful discriminatory practice, he shall state findings of fact and shall issue and cause to be served on the complainant an order based on such findings and setting them forth dismissing the said com-

**Copies of orders**

**Second complaints**

**Licensing agencies**

plaint as to such respondent. A copy of each order issued by the commissioner shall be delivered in all cases to the attorney general, the secretary of state, if he has issued a license to the respondent, and such other public officers as the division deems proper, and if any such order issued by the commissioner concerns a regulated creditor, the commissioner shall forward a copy of any such order to the superintendent. A copy of any complaint filed against any respondent who has previously entered into a conciliation agreement pursuant to paragraph a of subdivision three of this section or as to whom an order of the division has previously been entered pursuant to this paragraph shall be delivered to the attorney general, to the secretary of state if he has issued a license to the respondent and to such other public officers as the division deems proper, and if any such respondent is a regulated creditor, the commissioner shall forward a copy of any such complaint to the superintendent.

**Rules of practice**

d. The division shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder.

**Time for filing complaint**

5. Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice.

**Temporary injunction of action thwarting order**

6. At any time after the filing of a complaint with the division alleging an unlawful discriminatory practice under this article, if the division determines that the respondent is doing or procuring to be done any act tending to render ineffectual any order the commissioner may enter in such proceeding, the commissioner may apply to the supreme court in any county where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or if the complaint alleges an unlawful discriminatory practice under subdivision three or paragraphs (a), (b) or (c) of subdivision five of section two hundred ninety-six of this article, where the housing accommodation, land or commercial space specified in the complaint is located, for an order requiring the respondents or any of them to show cause why they should not be enjoined from doing or procuring to be done such act. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording all parties an opportunity to be heard, if the court deems it necessary to prevent the respondents from rendering ineffectual an order relating to the subject matter of the complaint, it may grant appropriate injunctive relief upon such terms and conditions as it deems proper. In the event that the complaint is dismissed by final order of the division or a court, the respondent shall be entitled to such remedies as are prescribed in section twenty-five hundred twelve of the civil practice law and rules. †

**Compliance investigation**

7. Not later than one year from the date of a conciliation agreement or an order issued under this section, and at any other times

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**† See page 35 for Section 2512 of the Civil Practice Law & Rules.**

in its discretion, the division shall investigate whether the respondent is complying with the terms of such agreement or order. Upon a finding of non-compliance, the division shall take appropriate action to assure compliance.

Disclosure

8. No officer, agent or employee of the division shall make public with respect to a particular person without his consent information from reports obtained by the division except as necessary to the conduct of a proceeding under this section.

Court action based on unlawful discriminatory practice

9. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages and such other remedies as may be appropriate, unless such person had filed a complaint hereunder or with any local commission on human rights, or with the superintendent pursuant to the provisions of section two hundred ninety-six-a of this chapter, provided that, where the division has dismissed such complaint on the grounds of administrative convenience, such person shall maintain all rights to bring suit as if no complaint had been filed. No person who has initiated any action in a court of competent jurisdiction or who has an action pending before any administrative agency under any other law of this state based upon an act which would be an unlawful discriminatory practice under this article, may file a complaint with respect to the same grievance under this section or under section two hundred ninety-six-a.

Election of remedies

Human Rights Appeal Board

§ 297-a. **State human rights appeal board.** 1. There is hereby created in the executive department a state human rights appeal board, in this article referred to as the board, consisting of a chairman and three members appointed by the governor, by and with the advice and consent of the senate. No more than two members shall be from the same political party.

Bipartisan

Chairman

2. The governor shall appoint a chairman, to serve as the chief executive officer of the board, and who shall hold office at the pleasure of the governor. The chairman of the board shall have the power and the duty to assign members appropriate functions as may be needed to promote the efficient transaction of the business of the board and to appoint such employees and agents as he may deem necessary, fix their compensation within the limitations provided by law and prescribe their duties.

Terms of members

3. The terms of office of the present members of the board shall expire on June thirtieth, nineteen hundred seventy-five. Thereafter, the term of a member shall be six years, provided, however, that of those members first appointed on or after the effective date of this act, one shall be appointed for a term of four years and two for terms of six years, from July first, nineteen hundred seventy-five. A member chosen to fill a vacancy otherwise than by expiration of a term shall be appointed for the unexpired term of the member whom he is to succeed.

Hearing

Determination

4. Appeals shall be heard by the chairman or one member of the board and a majority vote of the board, including the chairman and the members, shall be necessary for a determination of such appeal. Said determination shall be made within two hundred seventy days of the filing of a notice thereof.

5. The chairman and each member shall be an attorney, admitted to practice before the supreme court. The members of the board shall receive the sum of one hundred fifty dollars per day when rendering service as members, provided that the aggregate of such fees to any one member in any one fiscal year shall not exceed an amount established and approved by the director of the budget. The chairman and each member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties. A member may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

Powers, duties

6. The board shall have power, and it shall be its duty:

a. To meet and function at any place within the state;

b. To adopt, promulgate, amend and rescind suitable procedural rules with respect to the functioning of the board and the setting of time limits for the hearing of appeals and the rendering of decisions thereon;

c. To hear appeals by any party to any proceeding before the division from all orders of the commissioner issued pursuant to this article, provided such appeals are commenced by filing with the board of a notice of appeal within fifteen days after service of such order;

d. To receive briefs, and, where the board deems it advisable, to hear oral argument with respect to such appeals;

e. To require the submission to it from the division of an original or certified copy of the entire record on which any order appealed from is based, which record need not be reproduced;

f. To stay the effectiveness of any order of the commissioner pending the determination of an appeal in proper cases and on such terms and conditions as the board may require.

Limited review

7. The board may affirm, remand or reverse any order of the division or remand the matter to the division for further proceedings in whole, or with respect to any part thereof, or with respect to any party, provided however that the board shall limit its review to whether the order of the division is:

a. in conformity with the constitution and the laws of the state and the United States;

b. within the division's statutory jurisdiction or authority;

c. made an accordance with procedures required by law or established by appropriate rules or regulations of the division;

d. supported by substantial evidence on the whole record; or

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e. not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The division shall be bound by the decision of the board except to the extent such decision is reversed or otherwise modified by a court of competent jurisdiction pursuant to this article.

Venue

Petition

Power of court

Review on record

Exclusive jurisdiction

§ 298. **Judicial review and enforcement.** Any complainant, respondent or other person aggrieved by any order of the board may obtain judicial review thereof, and the division may obtain an order of court for its enforcement and for the enforcement of any order of the commissioner which has not been appealed to the board, in a proceeding as provided in this section. Such proceeding shall be brought in the appellate division of the supreme court of the state in the judicial department embracing the county wherein the unlawful discriminatory practice which is the subject of the order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record of all prior proceedings and the issuance and service of a notice of motion returnable before such appellate division of the supreme court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part such order. No objection that has not been urged in prior proceedings shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Any party may move the court to remit the case to the division in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows reasonable grounds for the failure to adduce such evidence in prior proceedings. The findings of facts on which such order is based shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the court and by the court of appeals as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the court of appeals in the same manner and form and with the same effect as provided for appeals from a judgment in a special proceeding. The division's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of such order. The appeal shall be heard on the record without requirement of printing. The division may appear in court by one of its attorneys. A proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within thirty days after the service of such order.

**Application outside of state**

§ 298-a. **Application of article to certain acts committed outside the state of New York.** 1. The provisions of this article shall apply as hereinafter provided to an act committed outside this state against a resident of this state or against a corporation organized under the laws of this state or authorized to do business in this state, if such act would constitute an unlawful discriminatory practice if committed within this state.

**Residents-domestic corporations**

2. If a resident person or domestic corporation violates any provision of this article by virtue of the provisions of this section, this article shall apply to such person or corporation in the same manner and to the same extent as such provisions would have applied had such act been committed within this state except that the penal provisions of such article shall not be applicable.

**Non-residents—foreign corporations**

3. If a non-resident person or foreign corporation violates any provision of this article by virtue of the provisions of this section, such person or corporation shall be prohibited from transacting any business within this state. Except as otherwise provided in this subdivision, the provisions of section two hundred ninety-seven of this chapter governing the procedure for determining and processing unlawful discriminatory practices shall apply to violations defined by this subdivision insofar as such provisions are or can be made applicable. If the division of human rights has reason to believe that a non-resident person or foreign corporation has committed or is about to commit outside of this state an act which if committed within this state would constitute an unlawful discriminatory practice and that such act is in violation of any provision of this article by virtue of the provisions of this section, it shall serve a copy of the complaint upon such person or corporation by personal service either within or without the state or by registered mail, return receipt requested, directed to such person or corporation at his or its last known place of residence or business, together with a notice requiring such person or corporation to appear at a hearing, specifying the time and place thereof, and to show cause why a cease and desist order should not be issued against such person or corporation. If such person or corporation shall fail to appear at such hearing or does not show sufficient cause why such order should not be issued, the division shall cause to be issued and served upon such person or corporation an order to cease or desist from the act or acts complained of. Failure to comply with any such order shall be followed by the issuance by the division of an order prohibiting such person or corporation from transacting any business within this state. A person or corporation who or which transacts business in this state in violation of any such order is guilty of a class A misdemeanor. Any order issued pursuant to this subdivision may be vacated by the division upon satisfactory proof of compliance with such order. All orders issued pursuant to this subdivision shall be subject to judicial review in the manner prescribed by article seventy-eight of the civil practice law and rules.

**Transaction of Business in state barred**

**Violations—a misdemeanor**

**Judicial review**

§ 299. **Penal provision.** Any person, employer, labor organization or employment agency, who or which shall wilfully resist, prevent, impede or interfere with the division or any of its employees or representatives in the performance of duty under this article, or shall wilfully violate an order of the division or commissioner, shall be guilty of a misdemeanor and be punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both; but procedure for the review of the order shall not be deemed to be such wilful conduct.

Misdemeanor

§ 300. **Construction.** The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this article shall be deemed to repeal any of the provisions of the civil rights law or any other law of this state relating to discrimination because of race, creed, color or national origin; but, as to acts declared unlawful by section two hundred ninety-six of this article, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this article, he may not subsequently resort to the procedure herein.

Liberal construction

Election of remedies

*§ 301. **Separability.** If any clause, sentence, paragraph or part of this article or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this article.

### Sections 13-15 of Chapter 958 of Laws of 1968

§ 13. Any proceeding before the state commision for human rights commenced prior to the effective date of this act by the filing of a complaint alleging an unlawful discriminatory act, shall continue to be subject to the jurisdiction of the division, provided that:

a. Any such proceeding as to which no finding of probable cause had been made pursuant to subdivision two of section two hundred ninety-seven of the executive law as in force prior to the effective date of this act, shall on the effective date of this act become subject to the procedures set forth in the provisions of this act provided that the time limit for the processing of such complaint shall be deemed to be computed from the effective date of this act.

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* Section 3 of Chapter 662 of the Laws of 1975 reads as follows: "§ 3. If any clause, sentence, paragraph, section or part of subdivision thirteen of section two hundred ninety-six of the executive law or of section two hundred ninety-eight-a of the executive law, as added by this act or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, or the application thereof to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, or the person or circumstances directly involved in the controversy in which such judgment shall have been rendered."

b. If in any such proceeding a finding of probable cause has been made and conference, conciliation and persuasion are being attempted pursuant to subdivision two of section two hundred ninety-seven, such proceeding shall be set down for a hearing before a hearing examiner pursuant to the procedures authorized by this act not later than fifteen days after the effective date of this act.

c. Any hearing in progress at the time of the effective date of this act before three commissioners shall be continued before such persons who were commissioners prior to such date except that for the purposes of this act such persons shall be deemed to be hearing examiners and shall continue such hearing as hearing examiners pursuant to the procedures established by this act.

All proceedings before such persons as hearing examiners shall be completed within thirty days after the effective date of this act. If such persons do not act within such period, or fail or refuse to so act, such hearing shall be had de novo pursuant to the procedures established by this act. Any person acting after the effective date of this act pursuant to this section as a hearing examiner whose position would otherwise be abolished by this act shall receive a per diem payment of one hundred dollars plus his reasonable and necessary expenses incurred in fulfilling such function.

§ 14. When either the chairman of the state commission for human rights or the state commission for human rights or the law against discrimination is referred to or designated in any other law, executive order, local law, or rule, regulation, contract, agreement, judgment or other document such reference or designation shall be deemed to refer to the commissioner of human rights, the division of human rights and the human rights law, respectively.

§ 15. This act shall take effect July first, nineteen hundred sixty-eight.

*Exhibit No. 12*

APPENDIX J , Footnote 12, p. 275, Vol. I

A SUMMARY AND A SURVEY REPORT ON EMPLOYER ATTITUDES TOWARD AFFIRMATIVE ACTION BY BARNHILL-HAYES, INC. REFERENCE INSERT ON LINE 5 AT PAGE 275 OF THE TRANSCRIPT DATED TUESDAY, MAY 13, 1980

**FROM:** Ellen Freudenheim
Peter Small & Associates
400 Madison Avenue
New York, New York 10017
(212) 421-1650

**FOR:** Barnhill-Hayes, Inc.

COMPANY CONTACT:

Helen I. Barnhill
(414) 276-4554

FOR RELEASE AM's

Tuesday, April 3

## THE HANDICAPPED, VIETNAM VETERANS, HISPANICS FACE DIM EMPLOYMENT FUTURE, SURVEY FINDS

WASHINGTON, D.C., April 2 -- Handicapped people, Vietnam veterans and Hispanics face the least chance of making significant employment strides during the next five years, executives of leading corporations indicated in a national survey released here today.

The survey, "Employer Attitudes Toward Affirmative Action", was commissioned by Barnhill-Hayes, Inc., a management consulting firm specializing in the areas of affirmative action and equal employment opportunity. It was conducted by McBain Research, an international research organization.

According to the survey:

---- Some 47% of employers believe handicapped people will make the least significant strides.

---- 20% saw Vietnam veterans as being least likely to advance and 16% mentioned Hispanics.

When asked which groups had the best chances of making significant employment strides, women were mentioned by 51% and blacks by 21%.

(MORE)

The survey is based on a detailed questionnaire mailed in January to some 3,000 chief executive officers of companies covering more than a dozen industries including banking and finance, insurance, transportation, food products, automotive and retailing.

Barnhill-Hayes said that 72% of the companies responding had sales of from $100 million to $1 billion or more, and that 61% had from 1,200 to over 12,000 employees.

## Reveal Corporate Concerns

Executives surveyed reported that management's greatest concerns with respect to affirmative action were being fined to compensate for past discrimination (25%), losing government contracts (22%) and adverse publicity (22%).

By 62% to 27% executives rejected the notion that a ruling by the Supreme Court favoring Weber in the "reverse discrimination" case of Weber vs. Kaiser Aluminum would have any impact on existing affirmative action programs.

Executives also rejected, by 60% to 35% the suggestion that a ruling in favor of Weber would "destroy affirmative action as it is currently practiced--on a voluntary basis."

## Favor Continued Affirmative Action

By an overwhelming majority of 82% to 17%, management agreed that affirmative action should be just as concerned with women, the handicapped, veterans and older workers as it was with racial minorities.

(MORE)

A plurality of 54% to 44% disagreed with the statement that affirmative action was declining as an issue of concern to top management.

However, the majority of executives surveyed, by 50% to 43%, maintained that companies should be required to have formalized affirmative action programs only if the company has been found in non-compliance of Equal Employment Opportunity Commission and Office of Federal Contact Compliance Programs guidelines.

According to Helen I. Barnhill, president of Barnhill-Hayes, Inc., "The survey represents one of the few ever taken to elicit the views of the business community which, for the last decade, has carried the primary responsibility for affirmative action.

" She added that, "While the survey provides an opportunity for many executives to compare their attitudes with others in business, it also identifies those areas that still require management's continued attention.

"Over the next few years, management will have to focus on getting a better understanding of government affirmative action guidelines, developing or acquiring the managerial expertise needed to fulfill these regulations and providing women and minorities with a better orientation toward the corporate environment," Ms. Barnhill said.

## Assess AA Accomplishments

More than half of the executives responding (52%) believe that affirmative action has helped advance the cause of women and minorities in employment a great deal, while 42% feel their advance was only "somewhat".

By a 72% to 15% majority, executives assert that employee productivity has not been diminished by affirmative action.

## Examine EEOC Role

An overwhelming 88% of executives feel that the EEOC should be more concerned with the results of a company's affirmative action program than with the measures a company should take to achieve EEO.

In addition, 67% believe that the EEOC should require companies to justify the use of hiring and promotion tests that by their nature discriminate against women, the handicapped and racial minorities.

Of the executives responding to the survey, 77% were aware of a formal complaint made by an employee or former employee to the EEOC, and 48% knew their company had been the subject of an AA/EEO lawsuit.

When asked if their company was contemplating any changes in the way AA matters are handled, 79% of the executives indicated that no changes were planned.

# # #

Barnhill-Hayes

# Employer Attitudes Toward Affirmative Action

April, 1979

## INTRODUCTION

Although "affirmative action" programs have become an important facet of Amercian corporate life, little effort has been made to elicit the views of corporate executives toward affirmative action.

In December 1978, Barnhill-Hayes, Inc. commissioned McBain Research, an international research organization, to conduct a survey to learn how top corporate executives view the myriad aspects of affirmative action.

Barnhill-Hayes, Inc. is a management consulting firm which assists various organizations -- corporations, associations, governmental bodies -- in helping bring minorities and women into the employment mainstream and assessing the AA efforts of those various organizations.

During January 1979, a questionnaire was mailed to 3,000 corporations covering a broad spectrum of American business. Some 286 returns were made (almost 10%), and on the basis of this sample, the findings of this survey were drawn.

A copy of the questionnaire is included in this report.

## SURVEY HIGHLIGHTS

### A. Reaction to Latest EEOC Guidelines

Corporate executives support the recently promulgated Federal guidelines for affirmative action.

- Fully 88% agreed that the Equal Employment Opportunity Commission should be more concerned with the overall results of a company's AA program than with outlining measures for achieving equal employment opportunity.
- A 67% majority agreed that companies should be required to justify on a job-related basis using hiring and promotion tests that by their nature discriminate against women, the handicapped, racial minorities and others.

### B. Reaction to the Bakke Case and Weber vs. Kaiser Aluminum Case

The Bakke and Weber cases have had or will have only a moderate impact on business.

- 78% of the executives surveyed disagreed that affirmative action took on new importance for their company as a result of the Bakke case.
- 67% agreed that the Bakke decision was concerned with quota admissions to educational institutions and, as such, has little relevance to AA in business.

- 68% disagreed that a pro-Weber ruling would destroy affirmative action as it is currently practiced -- on a voluntary basis.

- 62% felt that a pro-Weber ruling would have either a very minor impact or no impact at all on their companies existing AA program.

C. Obstacles to Affirmative Action

The survey asked what executives felt were the single biggest obstacles to affirmative action and to the assimilation and advancement of minorities within the corporate environment.

The single biggest obstacle cited was the perceived lack of qualified minorities, including women, to meet affirmative action goals.

The next most frequently mentioned problem was the lack of management commitment to AA both at the top and middle management levels. The lack of clarity of government regulations and government bureaucracy also were cited with some frequency.

Once hired, a minority's biggest problem in being assimilated into the mainstream was thought to be his/her lack of familiarity with the corporate environment.

D. Women vs. Other Minorities

Women have a far better chance than other minorities in the corporate environment, according to the executives interviewed.

- By 50% to 15%, executives said women will have an easier time being accepted in the ranks of senior management.
- By a two-to-one margin, women are thought to have a greater chance of actually entering the ranks of senior management.
- By 51% to 21%, women are felt to have the best chance of making significant strides in employment.

While executives (94%) believe that affirmative action has helped advance the cause of women and minorities, a like majority (over 90%) believe that it is not likely that either women or blacks will become chief executive officers of their companies within the next 10 to 15 years.

E. Affirmative Action in the Corporate Environment

Business executives overwhelmingly believe, by 82% to 17%, that affirmative action should be just as concerned with women, the handicapped, older workers and other minorities as it is with racial minorities.

At the same time, 47% feel that AA objectives are achievable within the framework of their business; 25% disagree and another 25% are unsure.

Executives were evenly divided (49% agree - 50% disagree) as to whether or not business has been asked to assume too great a responsibility with regard to eliminating discrimination.

Further, they disagreed by 64% to 33% that government emphasis should be on bringing women and minorities into upper management rather than on bringing them into the mainstream of the mass labor force.

Management's greatest affirmative action concerns, the survey found, are first, being fined for the past discrimination; second, losing government contracts; and third, adverse publicity.

Those interviewed also felt, by a slim 54% to 44% plurality, that affirmative action is not declining as an issue of concern to top management.

Comment: Taken as a whole, this study shows that affirmative action has matured to the point where it is not simply the cause of activists only. Rather, affirmative action has advanced to the point where it has largely become a "fact" of corporate life, and as such, is less likely to be diluted or unduly influenced by isolated court cases and incidents. It is interesting to note that throughout the survey, business executives have responded with real candor in assessing their own shortcomings in implementing affirmative action. Nonetheless, it is apparent that business still has a way to go in terms of demonstrating a genuine commitment to affirmative action and not relying on the "can't find enough minority candidates" excuses.

## 1. Obstacles to meeting AA/EEO Goals Established by Federal Government

By better than a two-to-one margin (46%), executives claimed that the single biggest obstacle to meeting affirmative action goals established by the Federal government was a lack of enough minority candidates -- a recurring theme throughout the interviews.

Unclear and imprecise government guidelines along with a lack of real management commitment (22% and 21%) were the next most frequently cited obstacles to meeting affirmative action goals.

Comment: It is clear that executives involved with affirmative action in corporations have difficulty interpreting government guidelines. Accordingly, the government should re-examine its guidelines with an eye toward making them more understandable. By the same token, executives should re-examine their own commitment to AA with an eye toward making a greater effort to better understand the government's guidelines.

# DETAILED FINDINGS

Question 1: In your view, what would you say is the single biggest obstacle today to meeting the affirmative action goals the Federal government has established for corporations?

| | | |
|---|---|---|
| a. | Lack of real management commitment to affirmative action | 20% |
| b. | Unclear, imprecise government guidelines | 21% |
| c. | Not enough minority job candidates | 46% |
| d. | No formalized mechanism to identify prospective minority employees | 5% |
| e. | Current company employment systems will not accommodate the necessary changes | 3% |
| f. | Other | 5% |

Base: 331

(more than original base due to multiple answe

## 2. Whether AA Objectives Established by Federal Government are Achievable

Business executives are divided in their opinions as to whether or not Federal government-established affirmative action goals are achievable within the framework of their business.

- A substantial 47% of those surveyed believes that the objectives of affirmative action established by the Federal government are achievable within the framework of the way their business is currently conducted.
- However, an equally large number either don't believe those affirmative action objectives are achievable, or are not sure.

Question 1b: Thinking about the objectives of affirmative action established by the Federal government, would you say that these objectives:

| | |
|---|---|
| a. Are achievable within the framework of the way your business is conducted | 47% |
| b. Are not achievable | 25% |
| c. Not sure | 25% |
| d. No answer | 3% |

Base: 286

Of the 64 respondents who commented on why they thought the Federal government's AA objectives were not achievable, 36% said that a lack of qualified candidates was the reason.

In several instances, the lack of minorities in a given geographic area was cited as the problem. For example, one respondent wrote:

- "It's all due to the location of our operations. There is low minority representation in our area, and we are unable to attract enough qualified minority candidates."

In all, 23% talked of burdensome government problems, 16% mentioned lack of time, and 14% placed the blame on some aspect of management.

Representative comments follow:

- "The Federal bureaucracy has been staffed with too many zealots who don't understand business and end up alienating the very people whose cooperation they seek."

- "Humans cannot and should not be reduced to mere quotas. After all, although Uncle Sam doesn't recognize it, they are human."

- "These objectives may be achievable, but not within the time frames specified."

- "People don't like things pushed down their throats. Further, women and minorities have to understand that to get ahead they must get proper education and not expect to advance primarily only being a woman or minority."

3. Where the Emphasis of Federal Government's AA Efforts Should Be

By a wide 64% to 33% margin, executives disagreed that the government's AA efforts should be on bringing women and minorities into upper management rather than into the mainstream of the labor force.

Of the 161 who gave reasons for disagreeing, 25% were of the opinion that a natural "rising process" would ensue once the minorities had entered the working force ranks in sufficient numbers. Another 20% claimed there was a need for women and minorities to acquire the proper experience and training, 12% felt that it would depend on their ability, and 12% said the emphasis should be on both.

The following comments illustrate these points of view:

- "As women and minorities enter the labor force in ever-increasing numbers in non-traditional jobs, they learn the ropes and gain the experience necessary to become contenders for more responsible positions."

- "We have experienced extreme difficulty in finding qualified female and/or minority candidates from labor markets. Infusion into the company's internal pool will provide the opportunity to gain qualifications, prove themselves, and establish themselves as future office and management candidates."

- "I believe the emphasis should be on getting these people into the labor force and providing training and education in order to prepare them for upper management. It's not fair to set them up for failure by expecting results without enough opportunity to be prepared."

- "Anything based on anything but merit is grossly unfair and anti-productive."

- "(Emphasis) should be on both. There is value in employing unemployed skilled minorities, giving them an opportunity to learn job skills and provide opportunities for upgrading. Sometimes bringing women and minorities into the ranks of upper managemant means only that the company buys already-qualified people away from another company, resulting in no real gains for anyone."

Comment: It should be encouraging to affirmative action supporters that 64% of company executives feel that the affirmative action emphasis should be on bringing minorities in at the entry level, if it can be assumed that upward mobility is possible relatively quickly for minorities brought in at the entry level. What is also encouraging is that bringing minorities in at the entry level would mean that more people would be working and contributing to the economy.

This does not mean, however, that the entry level should be the only level at which minorities and women are brought in.

**Question 2:** Some people believe that the emphasis of the Federal government's affirmative action efforts should be more on bringing women and minorities into the ranks of upper management rather than on bringing them into the mainstream of the mass labor force. Would you agree or disagree with this view?

| | |
|---|---|
| Agree | 33% |
| Disagree | 64% |
| No Answer | 3% |

Base: 286

4. **Biggest Problem in Process of Hiring Minorities**

When questioned as to the biggest problem associated with the process of hiring minorities, better than three-quarters (76%) of those responding pointed to "not enough qualified minority candidates."

Only 11% named "no effective mechanism to identify potential candidates" as the biggest problem, and 8% referred to "management resistance generally."

Among the 15 "other" comments, workers' attitudes, tradition and the credibility of the present employment system were mentioned more than once.

These responses by the executives are typical:

- "There are just too many philosophical differences, and misconceptions by minorities. Qualifications not only include academic/technical abilities, but also include business acumen for detail and for overall goals and priorities -- a good sense of human nature -- a willingness to accept others on their terms and conditions."

- "Communication is terrible between employer and employee. The employer can't articulate what he or she must have -- and the employee can't articulate relevantly what he/she can and will do."

Comment: The comment on "unqualified minorities" underscores the necessity for cooperation among all institutions in society to help ensure the availability of minority candidates. This means that our educational institutions, for example, should play a stronger role in preparing minorities for employment.

Question 3: Thinking now about the problems associated with hiring minorities, what do you feel is the biggest problem with the process?

| | |
|---|---|
| Not enough qualified minority candidates candidates | 76% |
| No effective "mechanism" to identify potential candidates | 11% |
| Management resistance generally | 8% |
| Other | 5% |

Base: 310

(more than original base due to multiple answers)

## 5. Greatest Obstacle Minority Employee Faces in Becoming Assimilated Into Employee Mainstream after Hiring

Over half (52%) of those responding noted that the greatest obstacle which a minority employee must overcome in being assimilated into the employee mainstream is "the employee's unfamiliarity with the corporate environment."

Thirteen percent feel that resistance from co-workers is the greatest obstacle; 12% cited resistance from upper management. Seven percent feel that there would be no obstacle to minorities being assimilated into the mainstream of the company.

Comment: On the basis of these findings, employers who are genuinely commited to affirmative action will need to address the question of training minority employees with respect to the corporate environment. Similarly, training efforts for supervision will need to be undertaken if supervisors are to become more effective in helping minorities adapt to corporate life.

Question 4: Once hired, what do you believe is the greatest obstacle a minority employee faces with regard to becoming assimilated into the employee mainstream?

| | |
|---|---|
| Resistance from co-workers | 13% |
| Resistance from upper management | 12% |
| The employee's unfamiliarity with the corporate environment | 52% |
| Other | 23% |

Base: 300

(more than original base due to multiple answers)

## 6. Acceptance of Women/Blacks into Ranks of Senior Management

Employers believe that women, by 50% to 15%, would have an easier time than blacks being accepted within the ranks of senior management.

Comment: As a general proposition there are a number of possible reasons why women will have an easier time of it. For example:

1. The women whom executives have in mind are probably white and, generally speaking, they are better educated and more "qualified" than their minority counterparts.
2. Women today have better access to the corporate structure than do minorities.
3. It is fact that in some geographic areas, minorities are difficult to find.
4. There may still be come residual racial discrimination.

Question 5: Thinking solely about women and blacks, which group would you say has an easier time today of becoming accepted within the ranks of senior management?

| | |
|---|---|
| Women | 50% |
| Blacks | 15% |
| No difference | 34% |
| No Answer | 1% |

Base: 286

### 7. Degree of Responsibility of Business for Eliminating Discrimination in Society

There was a virtual standoff concerning the question of whether business has been asked to assume too great a responsibility with regard to eliminating discrimination in society.

Half of the respondents (50%) disagreed that business has been asked to assume too much responsibility, while 49% agreed with the statement.

Some comments from those who agreed:

- "At least as far as cost and blame are concerned. I believe the Federal government and Congress and its staff are the most blatantly discriminatory institutions in our country."
- "The Federal government has certain spokespersons who would like business to be forced to solve basic social problems. But so far, what is actually required is not reasonable."

Comment: Here we see a real division in the corporate world. However, from an affirmative action point of view, it is encouraging to see that fully half believes that business has not been asked to assume too great a responsibility.

**Question 7:** Would you say that as a result of affirmative action, your company's employee productivity has been diminished in recent years?

| | |
|---|---|
| Has been diminished because of affirmative action | 15% |
| Has not been diminished | 72% |
| Has been diminished, but for reasons other than affirmative action | 12% |
| No opinion | 1% |

Base: 286

## 9. Chance of Women/Blacks Entering Ranks of Senior Management

In probing executives' perceptions of the future possibilities of women/blacks entering the ranks of upper management, the consensus was that women were much more likely to enter upper management than were blacks.

Sixty percent of the respondents believes women have the greater chance to enter senior management over the next five years, 9% cited blacks, and 31% said there was no distinction likely.

Question 8a: Looking to the future, which of the two minority groups cited below do you feel has the greater chance of entering the ranks of senior management over the next five years?

| | |
|---|---|
| Women | 60% |
| Blacks | 9% |
| Both | 31% |

Base: 286

9. Pace of Women/Blacks Entering Ranks of Senior Management

Out of the 171 respondents who mentioned women as more likely to advance, 28% said they will outpace blacks by a "substantial margin", 50% said they will outpace blacks by a "moderate margin," and only 17% believe they will outpace blacks by a "very slim margin."

Question 8b: To what extent do you feel the group you checked will outpace the other with respect to entering the ranks of senior management over the next five years?

| Women | |
|---|---|
| Will outpace by a substantial margin | 28% |
| Will outpace by a moderate margin | 50% |
| Will outpace, but only by a very slim margin | 17% |
| No answer | 5% |

Sub-Base: 171

| Blacks | |
|---|---|
| Will outpace by a substantial margin | 4% |
| Will outpace by a moderate margin | 56% |
| Will outpace, but only by a very slim margin | 37% |
| No answer | 3% |

Sub-Base: 27

## 11. Likelihood of a Woman/Black Becoming a Chief Executive Officer

The vast majority of those surveyed were quite pessimistic as to the chances of a woman or black becoming the chief executive officer of their company within the next 15 years.

Only 1% thought it "very likely" that a woman would attain the CEO position in their company within the next decade and a half. Five percent saw the probability as "likely" and 91% thought it "not very likely."

As far as blacks are concerned, 2% of those interviewed saw it as "likely", 69% said it was "not very likely" and 27% claimed there was "no chance at all."

Question 9a: How likely do you think it is that a woman will become the chief executive officer of your company within the next 10 to 15 years?

| | |
|---|---|
| Very likely | 1% |
| Likely | 5% |
| Not very likely | 91% |
| No Answer | 3% |

Base: 286

Question 9b: How likely do you think it is that a black will become the chief executive office of your company within the next 10 to 15 years?

| | |
|---|---|
| Very likely | - |
| Likely | 2% |
| Not very likely | 69% |
| No chance at all | 27% |
| No Answer | 2% |

Base: 286

### 12. Areas of Greatest Opportunity for Minority Employment

According to the executives, minorities have nearly equal opportunity for employment in the administrative, clerical, technical, personnel and financial fields.

Administrative and clerical were the top choices, at 23% and 22% respectively. One-fifth (20%) of those surveyed believes the technical category offers the greatest area for advancement. 19% named personnel, and 16% mentioned the financial field.

Question 10a: The chief executive position aside, which areas inside your company would you say offer the greatest job opportunities to minorities over the next five years?

| | |
|---|---|
| Personnel | 19% |
| Clerical | 22% |
| Administrative | 23% |
| Technical | 20% |
| Financial | 16% |

Base: 590

(more than original base due to multiple answers)

'3. Minority Group That Stands the Best Chance/Least Chance of Making Significant Employment Strides

Reinforcing the opinions noted earlier that women were more likely to profit from affirmative action in the near-term (See Q.5 and Q.8), 51% of those surveyed said that, of the five minorities named, women had the best chance to make significant employment strides over the next five years.

Blacks were the next mentioned group at 21%, while 10% saw Vietnam veterans and the handicapped as most likely to make significant strides. Only 8% thought Hispanics were the group with the best chances for advancement of their employment cause.

Conversely, almost half (47%) of those who responded said that the handicapped stood the least chance of making significant strides.

One fifth saw Vietnam veterans as being least likely to advance, 16% mentioned Hispanics, 13% blacks and only 3% women.

**Question 11a:** Thinking for a moment about the different minority groups affected by affirmative action, which of the groups below would you say stands the best chance of making significant employment strides over the next five years?

| | |
|---|---|
| Women | 51% |
| Blacks | 21% |
| Hispanics | 8% |
| Vietnam veterans | 10% |
| Handicapped | 10% |

Base: 425

(more than original base due to multiple answers)

**Question 11b:** And which group would you say stands the least chance of making significant employment strides over the next five years?

| | |
|---|---|
| Women | 3% |
| Blacks | 13% |
| Hispanics | 16% |
| Vietnam veterans | 20% |
| Handicapped | 47% |
| Don't Know | 1% |

Base: 304

(more than original base due to multiple answers)

The executives interviewed volunteered a number of reasons why the groups they cited would not make great strides in employment over the next few years.

The most frequently mentioned reason was the fact that a particular group was unknown or lacked clout. This was especially true of the Vietnam veterans.

The next most often-mentioned reason (14%) was lack of training and experience; another 14% indicated problems of some sort with management would deter advancement.

Two other drawbacks mentioned were lack of numbers (9%), mostly in reference to veterans, and necessity of accommodations (13%), mostly in reference to the handicapped.

14. Management's Greatest Concern About Affirmative Action

According to those interviewed, top management's greatest concerns about affirmative action are being fined for past discrimination, losing government contracts, and the prospect of adverse publicity.

One-quarter thought that being fined for past discrimination was the greatest concern, while 22% felt it was losing government contracts and a like amount felt it was the prospect of adverse publicity.

Only 6% thought their management was worried about losing esteem in the eyes of their employees and 2% thought the same about facing a consumer boycott.

A substantial 23% checked the "other" category, and again, there were three main areas of response in that group: 23% claimed their management was concerned with doing what was right: 22% felt the business cost was the most worrisome concern: and 19% thought it had something to do with governmental action and reaction.

- "We have no concern about the government's definitions. Our concern is living up to our own conscience and moral values."
- "Moral considerations."

Question 13: Once a corporate affirmative action program has been formulated, what do you feel is the biggest obstacle to its success?

| | |
|---|---|
| Lack of a genuine commitment to it from top management | 18% |
| Lack of genuine commitment to it from middle management | 22% |
| Poor internal communications | 7% |
| General lack of managerial experience in the affirmative action area | 27% |
| A general feeling of uncomfortableness about dealing with race-related matters | 9% |
| Other | 17% |

Base: 333

(more than original base due to multiple answers)

## 16. Thorniest AA Problem to Contend With Today

The thorniest affirmative action problem confronting their companies today was thought by the executives surveyed to be the lack of qualified minorities (30%), especially in the technical field.

Another 18% spoke of governmental imcompetence and unreasonableness, while 16% pointed to middle management attitudes and administrative problems.

- "Recruiting qualified and/or educated minorities, work apathy, under-educated minorities, and communicating many and varied AA requirements to divisions."
- "Meeting unrealistic goals."
- "Educating management and obtaining their commitment."
- "Getting enough qualified candidates when job openings exist."

Question 14: What would you say is the thorniest affirmative action problem your company is contending with today?

| | |
|---|---|
| Recruiting/hiring minorities at entry level/availability of recruits | 5% |
| Lack of qualifications/lack of minority applicants with technical ability/finding qualified or skilled minorities | 30% |
| Lack of minorities inside company/ lack of women and minorities in key positions in the company | 7% |
| Middle management problems/attitudes of managers/commitment to AA programs | 16% |
| Sex discrimination (male to female-female to male) | 5% |
| Government incompetency/unreasonableness/unrealistic | 18% |
| Employee turnover | 4% |
| Reverse discrimination | 3% |
| Business vs. social issue of AA/ cost of AA/expense | 3% |
| Minority attitudes/impatience | 5% |
| Handicapped | 1% |
| Other | 1% |
| None | 1% |
| No Answer | 1% |

Base: 286

## 17. Impact of a Potential Pro-Weber Ruling in Weber vs. Kaiser Aluminum Case

According to the majority of those surveyed (62%), the impending Weber vs. Kaiser Aluminum and Chemical Corp. case will have "very minor" or "no impact" on existing affirmative action programs if the court rules in favor of Weber.

Almost a third (32%) claimed a decision for Weber would have no impact, while 30% said it would have minor impact.

Less than a fifth (18%) thought such a decision would have a moderate impact, and only 9% believe it would have a major impact.

Among the 118 total respondents who gave a reason for their answers, 24% said the status quo would be intact no matter what. Fourteen percent claimed it was a different situation than their own, and 9% each mentioned that they would reorganize, that they would wait and see, and that quality, not quotas, is their rule of job measurement.

Typical comments include:

- "The Weber case introduces the concept of fixed quotas for compliance, whereas our goals and timetables are flexible targets which we generally reach. We see little relationship between the two."

- "Reverse discrimination puts us between a rock and a hard place. We cannot win."

- "We will continue to try to improve the position of blacks and women in our company."

- "If the Supreme Court decides in favor of Weber, we will have to see if the decision is followed by legislation on AA similar to legislation on pregnancy leave."

Question 15: Should the Supreme Court rule in favor of Weber, what impact do you feel such a decision would have on your company's existing affirmative action programs?

| | |
|---|---|
| Major impact | 9% |
| Moderate impact | 18% |
| Very minor impact | 30% |
| No impact | 32% |
| Not sure | 11% |

Base: 286

## 18. Extent to which AA has Helped Advance the Cause of Women and Minorities in Employment Area

Corporate executives believe affirmative action has been effective in advancing the cause of women and minorities.

Over half (52%) of the respondents believes that, considering the accomplishments to date, affirmative action has helped advance the cause of minorities and women in the private sector "a great deal."

At the same time, 42% said that AA programs have advanced their cause "somewhat," and only 5% think they have helped "hardly at all."

Some general comments:

- "Although results haven't been earthshaking, without EEO pressure, they would be minimal to non-existent."
- "Accomplishments are substantial. By broadening employee pool through EEO, business is easier. The greatest impact is the awareness by affected classes that opportunity exists."
- "Look at the EEOC-1 reports. Representation levels in top categories have more than tripled in the last eight-plus years."

**Question 16:** Thinking about the accomplishments of affirmative action to date, to what extent do you feel affirmative action has helped advance the cause of women and minorities in employment in the private sector?

| | |
|---|---|
| A great deal | 52% |
| Somewhat | 42% |
| Hardly at all | 5% |
| Not sure | - |
| No Answer | 1% |

Base: 286

19. Reactions to Bakke, Weber and AA/EEO Statements

Executives were asked to react to a number of widely-held opinions regarding the Bakke case and Weber versus Kaiser Aluminum case.

A. By and large executives feel that these cases will have only a moderate impact on business. For example:

- A substantial 78% disagreed with the assertion that affirmative action took on new importance with the Bakke case.

- 60% also disagreed that a pro-Weber decision in the Weber vs. Kaiser Aluminum case would "destroy affirmative action as it is currently practiced -- on a voluntary basis." A little over a third (35%) agreed with the statement.

- Over two-thirds (67%) agreed that the Bakke decision was concerned with quota admissions to educational institutions and as, such, had little impact on AA in business and industry.

B. Continued management support of and concern for AA was evidenced by:

- An almost five-to-one majority (82%-17%) agreed that affirmative action should be just as concerned with minorities (women, handicapped, veterans, older workers) as it was with racial minorities.

- A substantial 43% disagreed that companies should be required to have formalized AA programs only if the company has been found not to be in compliance with EEOC and O.F.C.C.P. guidelines as a result of a complaint; 50% agreed.

- By a 54% to 44% plurality, the executives surveyed disagreed with the statement that affirmative action was declining as an issue of concern to top management.

C. As far as the Equal Employment Opportunity Commission is concerned:

- An overwhelming 88% feels that the EEOC should be more concerned with the overall results of a company's AA program than with outlining the measures a company should take to achieve equal employment opportunity. Almost two-thirds (63%) agreed strongly with that assertion.

- Better than two-thirds (67%) agreed that the EEOC should require that companies justify on a job-related basis using hiring and promotion tests that by their nature discriminate against women, handicapped, racial minorities and others.

- The respondents were exactly divided (47% each) as to whether or not the EEOC should be concerned with job evaluation, comparing jobs of different natures and determining their relative importance to establish equal pay for jobs of equal importance.

Question 17: To what extent to you agree or disagree with the following statements?

| | Agree Strongly | Agree Somewhat | Disagree Somewhat | Disagree Strongly |
|---|---|---|---|---|
| a. Affirmative action as an issue of concern to top management is on the decline. | 8% | 36% | 29% | 25% |
| b. With the Bakke decision, affirmative action takes on new importance for our company. | 1% | 19% | 42% | 36% |
| c. If the courts rule in favor of Weber (in Weber vs. Kaiser Aluminum) it would "destroy affirmative action as it is currently practiced -- on a volunatry basis." | 9% | 26% | 36% | 24% |

| | Agree Strongly | Agree Somewhat | Disagree Somewhat | Disagree Strongly |
|---|---|---|---|---|
| d. The Bakke decision was concerned with quota admissions to educational institutions and as such means little for affirmative action in business and industry. | 30% | 37% | 24% | 9% |
| e. Affirmative action should be as concerned with the following minority groups as it is with racial minorities:<br>Vietnam veterans<br>Women<br>Handicapped<br>Older workers | 50% | 32% | 11% | 6% |
| f. The Equal Employment Opportunity Commission should be more concerned with the overall results of a company's affirmative action program than with outlining the measures a company should take to achieve equal employment opportunity. | 63% | 25% | 7% | 5% |
| g. The EEOC should require that companies justify on a job-related basis using hiring and promotion tests that by their nature discriminate against women, the handicapped, racial minorities and others. | 35% | 32% | 13% | 10% |
| h. The EEOC should be concerned with job evaluation, comparing jobs of different natures and determining their relative importance for the purpose of establishing equal pay for jobs of equal importance. | 22% | 25% | 15% | 32% |

| | Agree Strongly | Agree Somewhat | Disagree Somewhat | Disagree Strongly |
|---|---|---|---|---|
| i. Companies should be required to have formalized AA programs only if the company has been found not to be in compliance with EEOC and O.F.C.C.P. guidelines as the result of a complaint. | 23% | 27% | 24% | 19% |

## ). Type of Person Handling AA Matters

Almost one-third (31%) of all companies answering the survey has a full-time person whose sole responsibility is to handle AA matters on behalf of the company. Sixty-five percent, however still have someone who handles other responsibilities as well as AA.

Question 18: Does your company have a full time person whose sole responsibility is to deal with AA matters on behalf of your company, or are AA matters handled by someone in addition to their other responsibilities?

| | |
|---|---|
| Full-time person | 31% |
| Someone else | 65% |
| No answer | 4% |

Base: 286

## 21. Position of Person Handling AA Matters

The most common title of the person responsible for handling affirmative action in the companies responding was vice president (36), followed by director of personnel (29).

Another 19 handling AA are personnel managers, 17 are managers of EEO services and another 17 are assistant vice presidents. The next two largest groups at 14 each were vice president-personnel and director of EEO affairs.

Question 19: What is the title of the person who handles affirmative action for your company?

| | # |
|---|---|
| Vice President | (36) |
| Director of Personnel | (29) |
| Personnel Manager | (19) |
| Manager EEO Services | (17) |
| Assistant Vice President | (17) |
| Vice President - Personnel | (14) |
| Director of EEO Affairs | (14) |
| Vice President-Industrial Relations | (7) |
| Director-Industrial Relations | (6) |
| Manager-Employee Relations | (6) |

## 22. Position of Person to Whom the AA Executive Reports

The largest group by far to whom those who handle AA responsibilities report is president (58). The second largest (25) was chief executive officer, followed by executive vice president (21), vice president-personnel (20), vice president (18) and senior vice president (17).

Question 20: To whom does that person report?

| | # |
|---|---|
| President | (58) |
| Chief Executive Officer | (25) |
| Executive Vice President | (21) |
| Vice President-Personnel | (20) |
| Vice President-Director of Personnel | (18) |
| Senior Vice President | (17) |
| Vice President-Employee Relations | (9) |
| Personnel Director | (8) |
| Vice President-Industrial Relations | (7) |
| Vice President-Human Resources | (4) |

## 23. Contemplated Changes in Handling AA Programs

It seems that most companies are relatively happy with the way AA matters are being handled within their companies; only 18% are contemplating any changes in their AA administrative structure, while 79% said they are not contemplating any changes.

Of the 33 respondents who explained their "no change" answer, 13 claimed their present programs were working well, and eleven said they were progressing toward compliance on schedule.

Of the 44 respondents who explained their "yes change" answer, 18 said they were increasing management commitment, nine said they were increasing AA personnel, and eight claimed there was constant change going on to improve AA administration.

Question 21: Is your company contemplating any changes in the way AA matters are handled within your company?

| | |
|---|---|
| Yes | 18% |
| No | 79% |
| No answer | 3% |

Base: 286

## 24. Knowledge of Formal Complaints to EEO Against Company

Over three-quarters (77%) of the executives said that they knew of a formal complaint being made to an EEO body by an employee or former employee. Only 17% said they didn't know of any complaints; 6% gave no answer.

Question 22: To your knowledge has a formal complaint ever been made to any EEO body by an employee or former employee?

| | |
|---|---|
| Yes | 77% |
| No | 17% |
| No answer | 6% |

Base: 286

# DATA USED FOR CLASSIFYING RESPONSES

## TYPE OF COMPANY

| | |
|---|---|
| Banking/Finance | 27% |
| Heavy Industry | 17% |
| Light Industry | 11% |
| Food Products | 10% |
| Insurance | 10% |
| Consumer Products/ Packaged Goods (non-food) | 7% |
| Energy | 5% |
| Textiles | 5% |
| Automotive | 4% |
| Communications | 3% |
| Transportation | 3% |
| Retailing | 2% |
| Other | 13% |

Base: 286

(more than 100% due to multiple answers)

## SIZE OF COMPANY BY SALES

| | |
|---|---|
| $50 million and under | 9% |
| $50 million to $99 million | 6% |
| $100 million to $199 million | 20% |
| $200 million to $399 million | 16% |
| $400 million to $599 million | 11% |
| $600 million to $999 million | 6% |
| $1 billion and over | 19% |
| No answer | 13% |
| TOTAL | 100% |

Base: 286

## SIZE OF COMPANY BY NUMBER OF EMPLOYEES

| | |
|---|---|
| 200 and under | 12% |
| 201 to 500 | 10% |
| 501 to 1200 | 13% |
| 1201 to 1500 | 4% |
| 1501 to 3000 | 15% |
| 3001 to 4000 | 6% |
| 4001 to 8000 | 11% |
| 8001 to 12000 | 6% |
| 12000 and over | 19% |
| No answer | 4% |
| TOTAL | 100% |

Base: 286

# QUESTIONNAIRE

## AFFIRMATIVE ACTION SURVEY

. During the past decade the goals and objectives of Affirmative Action programs as they relate to business have expanded to become more sophisticated and complex.

a. In your view, what would you say is the single biggest obstacle today to meeting the affirmative action goals the Federal government has established for corporations?

☐ Lack of real management commitment to affirmative action

☐ Unclear, imprecise government guidelines

☐ Not enough minority job candidates

☐ No formalized mechanism to identify prospective minority employees

☐ Current company employment systems will not accommodate the necessary changes
☐ Other (please comment) ______________________________

b. Thinking about the objectives of affirmative action established by the Federal government, would you say that these objectives:

☐ Are achieveable within the framework of the way your business is conducted

☐ Are not achieveable

☐ Not sure

c. If "not achieveable" please elaborate: ____________________

______________________________________________

Some people believe that the emphasis of the Federal government's affirmative action efforts should be more on bringing women and minorities into the ranks of upper management rather than on bringing them into the mainstream of the mass labor force. Would you agree or disagree with this view?

☐ Agree

☐ Disagree (please comment) ________________________

______________________________________________

3. Thinking now about the problems associated with hiring minorities, what do you feel is the biggest problem with the process?

( ) Not enough qualified minority candidates

( ) No effective "mechanism" to identify potential candidates

( ) Management resistance generally

( ) Other (please comment) ______________________________

______________________________________________________

4. Once hired, what do you believe is the greatest obstacle a minority employee faces with regard to becoming assimilated into the employee mainstream?

( ) Resistance from co-workers

( ) Resistance from upper management

( ) The employee's unfamiliarity with the corporate environment

( ) Other (please comment) ______________________________

______________________________________________________

5. Thinking solely about women and blacks, which group would you say would have an easier time today of becoming accepted within the ranks of senior management?

( ) Women

( ) Blacks

( ) No difference in terms of becoming accepted

6. Some people feel that business has been asked to assume too great a responsibility with regard to eliminating discrimination in society. Would you agree or disagree with that point of view?

( ) Agree

( ) Disagree

Would you say that as a result of affirmative action, your company's employee productivity has been diminished in recent years?

( ) Has been diminished because of affirmative action

( ) Has not been diminished

( ) Has been diminished, but for reasons other than affirmative action. (please elaborate)________________

____________________________________________

a. Looking to the future, which of the two minority groups cited below do you feel has the greater chance of entering the ranks of senior management over the next five years?

( ) Women

( ) Blacks

( ) Both, no distinction likely

If you did not check "both," please answer the following question:

b. To what extent do you feel the group you checked will outpace the other with respect to entering the ranks of senior management over the next five years?

( ) Will outpace by a substantial margin

( ) Will outpace by a moderate margin

( ) Will outpace, but only by a very slim margin

a. How likely do you think it is that a woman become the chief executive officer of your company within the next 10 to 15 years?

( ) Very likely

( ) Likely

( ) Not very likely

b. How likely do you think it is that a black becomes the chief executive of your company within the next 10-15 years?

( ) Very likely

( ) Likely

( ) Not very likely

( ) No chance at all

10a. The chief executive position aside, which areas inside your company would you say offer the greatest job opportunities to minorities over the next five years?

( ) Personnel

( ) Clerical

( ) Administrative

( ) Technical

( ) Financial

b. If you checked "technical," please specify: ______________

______________________________________________

11a. Thinking for a moment about the different minority groups affected by affirmative action, which of the groups below would you say stands the best chance of making significant employment strides over the next five years?

( ) Women

( ) Blacks

( ) Hispanics

( ) Vietnam veterans

( ) The handicapped

b. And which group would you say stands the least chance of making significant employment strides over the next five years?

( ) Women

( ) Blacks

( ) Hispanics

( ) Vietnam veterans

( ) The handicapped

( ) Why__________________________________________________

12. Which of the following most closely approximates your management's greatest concern about affirmative action?

( ) Prospect of adverse publicity

( ) Losing government contracts

( ) Losing esteem in the eyes of employees

( ) Being faced with a consumer boycott

( ) Being fined to compensate for past discrimination

( ) Other (please comment)______________________________

__________________________________________________

13. Once a corporate affirmative action program has been formulated, what do you feel is the biggest obstacle to its success?

( ) Lack of a genuine commitment to it from top management

( ) Lack of a genuine commitment to it from middle management

( ) Poor internal communications

( ) General lack of managerial experience in the affirmative action area

( ) A general feeling of uncomfortableness about dealing with race-related matters

( ) Other (please comment)______________________________

__________________________________________________

14. What would you say is the thorniest affirmative action problem your company is contending with today?

____________________________________________________________

____________________________________________________________

15. This coming year, the Supreme Court is expected to rule on the case of Weber vs. Kaiser Aluminum and Chemical Corp. As you may know, this is a "reverse discrimination" case, where there is no evidence of past discrimination.

Should the Supreme Court rule in favor of Weber, what impact do you feel such a decision would have on your company's existing affirmative action problem?

( ) Major impact

( ) Moderate impact

( ) Very minor impact

( ) No impact

( ) Not sure

Would you please comment: ______________________________

16. Thinking about the accomplishments of affirmative action to date, to what extent do you feel affirmative action has helped advance the cause of women and minorities in employment in the private sector?

( ) A great deal

( ) Somewhat

( ) Hardly at all

( ) Not sure

7. To what extent do you agree or disagree with the following statements?

| | Agree Strongly | Agree Somewhat | Disagree Somewhat | Disagree Strongly |
|---|---|---|---|---|
| a. Affirmative action as an issue of concern to top management is on the decline. | | | | |
| b. With the Bakke decision affirmative action takes on new importance for our company. | | | | |
| c. If the courts rule in favor of Weber (in Weber vs Kaiser Aluminum) it would "destroy affirmative action as it is currently practiced -- on a voluntary basis." | | | | |
| d. The Bakke decision was concerned with quota admissions to educational institutions and as such means little for affirmative action in business and industry. | | | | |
| e. Affirmative action should be as concerned with the following minority groups as it is with racial minorities: | | | | |
| Vietnam veterans | | | | |
| women | | | | |
| handicapped | | | | |
| older workers | | | | |
| f. The Equal Employment Opportunity Commission should be more concerned with the overall results of a company's affirmative action program than with outlining the measures a company should take to achieve equal employment opportunity | | | | |

APPENDIX K - (FOOTNOTE ~~N~~ 14 AT p. 301) Vol. I

INFORMATION INSERT ON LINE 21 AT PAGE 301 OF THE TRANSCRIPT DATED TUESDAY, MAY 13, 1980

OFFICE OF THE SECRETARY OF EDUCATION
ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES
400 MARYLAND AVENUE, S.W. WASHINGTON, D.C. 20202

AUG 4 1980

Mr. Louis Nunez
United States Commission on Civil Rights
1121 Vermont Avenue, N. W.
Washington, D. C. 20425

Dear Mr. Nunez:

In your letter of June 23, 1980, you requested information concerning job placement of the disabled brought up in recent testimony. The accompanying tables of data show this information for the programs administered by the Rehabilitation Services Administration.

Table 1L shows both the work status at closure and the occupational grouping of persons rehabilitated in the State-Federal program of vocational rehabilitation in the last three years for which data are available (Fiscal Years 1976-1978). Each rehabilitated person must have been suitably employed for a minimum of 60 days before a rehabilitation success can be claimed. This common standard is in effect in each of the 84 State rehabilitation agencies.

The paragraph of testimony to which your letter referred contained a reference to "the number trained". For this reason, I am also forwarding another table (1K) which shows how many rehabilitated persons received various kinds of training services. It should be noted that, in the State-Federal program, services are individualized, and only those clients needing training will receive it. In other programs, it is possible that all clients or enrollees will receive training.

Please let me know if additional information is desired.

Sincerely,

Edwin W. Martin
Assistant Secretary for Special
Education and Rehabilitative Services

Enclosures

### Table 14 - Characteristics of persons rehabilitated by State vocational rehabilitation agencies, Fiscal Years 1976 to 1978

| Item | Fiscal Year | | | | | |
|---|---|---|---|---|---|---|
| | 1978 | | 1977 | | 1976 | |
| | Number | Percent | Number | Percent | Number | Perce |
| Total rehabilitations | 294,396 | — | 291,202 | — | 303,328 | — |
| Work status at referral | | | | | | |
| Number reporting | 291,107 | 100.0 | 279,148 | 100.0 | 296,217 | 100.0 |
| Wage or salaried workers | 48,509 | 16.7 | 47,013 | 16.8 | 53,447 | 18.0 |
| Competitive labor market | 46,527 | 16.0 | 45,238 | 16.2 | 51,407 | 17.3 |
| Sheltered workshops | 1,982 | 0.7 | 1,775 | 0.6 | 2,040 | 0.7 |
| Self-employed | 2,154 | 0.7 | 2,169 | 0.8 | 2,538 | 0.8 |
| Homemakers | 19,442 | 6.7 | 18,775 | 6.7 | 20,137 | 6.8 |
| Unpaid family workers | 1,008 | 0.3 | 1,021 | 0.4 | 1,243 | 0.4 |
| Not working | 219,994 | 75.6 | 210,170 | 75.3 | 218,852 | 73.9 |
| Students | 47,221 | 16.2 | 47,614 | 17.1 | 50,852 | 17.2 |
| Trainees | 2,318 | 0.8 | 2,382 | 0.9 | 2,751 | 0.9 |
| Others | 170,455 | | 160,174 | 57.4 | 165,249 | 55.8 |
| Work status at closure | | | | | | |
| Number reporting | 291,728 | 100.0 | 276,883 | 100.0 | 295,391 | 100.0 |
| Wage or salaried workers | 238,803 | 81.9 | 221,369 | 80.0 | 231,512 | 78.4 |
| Competitive labor market | 225,358 | 77.2 | 208,587 | 75.3 | 218,284 | 73.9 |
| Sheltered workshops | 13,445 | 4.6 | 12,782 | 4.6 | 13,228 | 4.5 |
| Self-employed | 8,672 | 3.0 | 8,950 | 3.2 | 10,095 | 3.4 |
| Homemakers | 41,518 | 14.2 | 42,961 | 15.5 | 48,919 | 16.6 |
| Unpaid family workers | 2,735 | 0.9 | 3,603 | 1.3 | 4,865 | 1.6 |
| Occupation at closure | | | | | | |
| Number reporting | 291,256 | 100.0 | 277,460 | 100.0 | 298,240 | 100.0 |
| Professional, technical, and managerial | 37,149 | 12.8 | 34,385 | 12.4 | 36,788 | 12.3 |
| Medicine and health | 5,846 | 2.0 | 6,000 | 2.2 | 6,182 | 2.1 |
| Education | 5,568 | 1.9 | 5,379 | 1.9 | 5,980 | 2.0 |
| Managers and officials n.e.c. | 5,584 | 1.9 | 5,085 | 1.8 | 4,870 | 1.6 |
| All others | 20,151 | 6.9 | 17,921 | 6.5 | 19,756 | 6.6 |
| Clerical | 33,639 | 11.6 | 29,802 | 10.7 | 30,968 | 10.4 |
| Stenography, typing, filing | 13,097 | 4.5 | 11,601 | 4.2 | 12,110 | 4.1 |
| Computing, account-recording | 10,369 | 3.6 | 9,288 | 3.3 | 9,335 | 3.1 |
| All others | 10,223 | 3.5 | 8,913 | 3.2 | 9,523 | 3.2 |
| Sales | 11,735 | 4.0 | 11,426 | 4.1 | 12,013 | 4.0 |
| Service | 56,458 | 19.4 | 54,827 | 19.8 | 59,918 | 20.1 |
| Domestic | 6,953 | 2.4 | 7,001 | 2.5 | 8,533 | 2.9 |
| Food and beverage preparation | 16,841 | 5.8 | 16,329 | 5.9 | 17,435 | 5.8 |
| Building | 10,003 | 3.4 | 8,891 | 3.2 | 8,981 | 3.0 |
| All others | 22,661 | 7.8 | 22,606 | 8.1 | 24,969 | 8.4 |
| Agriculture | 8,246 | 2.8 | 7,892 | 2.8 | 9,193 | 3.1 |
| Industrial | 90,589 | 31.1 | 84,214 | 30.4 | 87,676 | 29.4 |
| Skilled | 27,990 | 9.6 | 25,836 | 9.3 | 27,062 | 9.1 |
| Semi-skilled | 12,286 | 4.2 | 9,247 | 3.3 | 9,444 | 3.2 |
| Unskilled | 50,313 | 17.3 | 49,131 | 17.7 | 51,170 | 17.2 |
| Homemakers | 41,518 | 14.3 | 42,961 | 15.5 | 48,919 | 16.4 |
| Unpaid family workers | 2,402 | 0.8 | 3,250 | 1.2 | 4,351 | 1.5 |
| Sheltered workshop workers n.e.c. | 9,470 | 3.3 | 8,703 | 3.1 | 8,414 | 2.8 |

Table 1K - Characteristics of persons rehabilitated by State vocational rehabilitation agencies, Fiscal Years 1976 to 1978

| Item | Fiscal Year | | | | | |
|---|---|---|---|---|---|---|
| | 1978 | | 1977 | | 1976 | |
| | Number | Percent | Number | Percent | Number | Percent |
| Total rehabilitations | 294,396 | — | 291,202 | — | 303,328 | — |
| Type of service provided or arranged for by agency with and without cost | | | | | | |
| Number reporting | 292,070 | 100.0 | 280,536 | 100.0 | 299,246 | 100.0 |
| Diagnosis and evaluation | 272,319 | 93.2 | 262,511 | 93.6 | 263,071 | 87.9 |
| Restoration (physical or mental) | 125,776 | 43.1 | 123,043 | 43.9 | 129,166 | 43.2 |
| Training | 154,065 | 52.7 | 148,497 | 52.9 | 154,664 | 51.7 |
| College or university | 37,553 | 12.9 | 36,959 | 13.2 | 35,564 | 11.9 |
| Other academic (elementary or high school) | 9,776 | 3.3 | 9,316 | 3.3 | 15,499 | 5.2 |
| Business school or college | 9,157 | 3.1 | 9,094 | 3.2 | 11,938 | 4.0 |
| Vocational school | 36,737 | 12.6 | 34,497 | 12.3 | 35,391 | 11.8 |
| On-the-job training | 20,148 | 6.9 | 19,205 | 6.8 | 20,106 | 6.7 |
| Personal and vocational adjustment | 62,815 | 21.5 | 60,449 | 21.5 | 70,204 | 23.5 |
| Miscellaneous | 33,505 | 11.5 | 32,365 | 11.5 | 37,822 | 12.6 |
| Maintenance | 66,635 | 22.8 | 66,395 | 23.7 | 68,470 | 22.9 |
| Other services to clients | 101,477 | 34.7 | 93,186 | 33.2 | 101,655 | 34.0 |
| Services to other family members | 15,882 | 5.4 | 14,998 | 5.3 | 13,868 | 4.6 |
| Cost of case services | | | | | | |
| Number reporting | 291,271 | 100.0 | 279,684 | 100.0 | 297,637 | 100.0 |
| Clients served without cost | 20,328 | 7.0 | 17,970 | 6.4 | 18,944 | 6.4 |
| Clients served with cost | 270,943 | 93.0 | 261,714 | 93.6 | 278,693 | 93.6 |
| Clients served with cost | 270,943 | 100.0 | 261,714 | 100.0 | 278,693 | 100.0 |
| $1 - $99 | 51,493 | 19.0 | 50,954 | 19.5 | 56,786 | 20.4 |
| $100 - $199 | 24,931 | 9.2 | 23,706 | 9.1 | 26,190 | 9.4 |
| $200 - $299 | 17,062 | 6.3 | 16,713 | 6.4 | 19,371 | 6.9 |
| $300 - $399 | 17,140 | 6.3 | 17,727 | 6.8 | 19,994 | 7.2 |
| $400 - $599 | 26,499 | 9.8 | 26,413 | 10.1 | 29,949 | 10.7 |
| $600 - $799 | 19,502 | 7.2 | 19,641 | 7.5 | 22,111 | 7.9 |
| $800 - $999 | 15,595 | 5.8 | 15,259 | 5.8 | 16,760 | 6.0 |
| $1,000 - $1,999 | 46,977 | 17.3 | 44,746 | 17.1 | 46,048 | 16.5 |
| $2,000 - $2,999 | 22,187 | 8.2 | 20,063 | 7.7 | 18,850 | 6.8 |
| $3,000 and over | 29,554 | 10.9 | 26,492 | 10.1 | 22,634 | 8.1 |
| Mean cost, for all clients reporting | $1,187 | | $1,137 | | $998 | |
| Mean cost, for clients served with cost | $1,276 | | $1,215 | | $1,066 | |
| Rehabilitation facilities cost | | | | | | |
| Number reporting | 287,021 | 100.0 | 270,585 | 100.0 | 276,512 | 100.0 |
| No rehabilitation facility cost | 225,312 | 78.5 | 219,227 | 81.0 | 224,508 | 81.2 |
| Rehabilitation facility cost | 61,709 | 21.5 | 51,358 | 19.0 | 52,004 | 18.8 |

*Exhibit No. 14*

DAV
DISABLED AMERICAN VETERANS

Insert on line 12, p. 304,

Disabled American Veterans, Mini-Census Questionnaire on the Handicapped, as submitted by Ronald Drach, June 18, 1980.

Mini Census Questionnaire
on the Handicapped

1) How many years has it been since you first wanted to be employed?
0-1 5-10
2-5 over 10

2) Are you working? Yes. No.
If yes, please circle one.
Hours per week.
0-10 21-30 41 or more
11-20 31-40
Please list occupation.

3) Annual Salary Range (check one)

Less than 10,000
10,000 - 15,000
15,001 - 20,000
20,001 - 25,000
25,001 - 30,000
30,001 - 35,000
35,001 - 40,000
over 40,00

4) How was your disability incurred? (e.g. accident, injury, birth, military)

5) Highest educational level attained?
   Elementary
   High School
   College
   Graduate School
   Other______________

6) Do you work for:
   Government: Federal___ State___ County___
   City___

   Private Industry: For Profit___

   Nonprofit___ Other___

7) How long have your been with your present employer?

8) Have you been promoted during the past:
0 - 1 year
1 - 2 years
2 - 5 years
5 - 10 years

9) Do you believe your present abilities are being properly utilized by your employer?
Yes___ No___

10) If you are not working:
   a. are you actually seeking employment.
      Yes___ No___
   b. how long have you been seeking employment_______
   c. would you take a job if offered which would utilize your education and experience. Yes___ No___
   d. If you are not actively seeking employment, please explain briefly.

11) Do you believe an employer has ever discriminated against you because of your impairments? If yes, in what area?
   Employment___ Promotion___ Transfer___
   Training___ Fringe Benefits___ Other___
Type of Employer:

12) Are you a veteran? If yes, please indicate period of active duty service.

13) Is your disability service-connected? (related to military service) If yes, is it combat or non-combat related.

14) Total personal income as reported on W-2 Form.

15) Total family income as reported on W-2's.

16) If not working, please list sources of income.

17) If only spouse works, list spouses annual income and other sources of income.

18) Do you own your own home, rent your own home or live with a relative.

*Exhibit No. 15*

# Statistical Report

## Enrollment in Special Education

Prepared for the
Subcommittee on Select Education
Education and Labor Committee
House of Representatives

Office for Civil Rights
Department of Health, Education, and Welfare
October 1979

## ENROLLMENT IN SPECIAL EDUCATION PROGRAMS

This report presents selected analyses of special education enrollment data collected from public schools. Sources of the data are:

- Office for Civil Rights (OCR) Elementary and Secondary School Survey: 1976-77 school year, conducted Winter-Spring, 1977.
- OCR Elementary and Secondary School Survey: 1978-79 school year, conducted fall, 1978.

Much of the information reported here has been drawn from the 1976-77 school survey except for national totals, where preliminary, unedited 1978-79 school survey data are available and have also been included. Detailed state data from OCR's fall 1978 school survey will not be available until December 1979.

It is worth noting that the 1976-77 school survey was conducted before HEW's regulation implementing Section 504 of the Rehabilitation Act of 1973 was issued. The Section 504 regulation was issued on May 4, 1977.

The information provided in this document is not designed to be all inclusive, but is intended to illustrate several major points. First, there are significant differences in special education enrollment patterns on the basis of student race/ethnicity. Second, there are wide regional and state-to-state variations in enrollment. Finally, the 1978-79 data show that there are several positive trends in the provision of special education services including an increase in mainstreaming and a more even distribution of minority enrollment among the different program categories.

The report is organized into four sections. Section I presents national enrollment statistics for the 1976-77 and 1978-79 school years. Section II provides regional data for 1976-77. The third Section provides 1976-77 and 1978-79 data on mainstreaming. Data on all handicapped students identified and served are contained in Section IV.

## I. SUMMARY OF NATIONAL STATISTICS ON SPECIAL EDUCATION ENROLLMENT BY RACE/ETHNICITY FOR 1976-77 and 1978-79

National data on enrollment in special education programs for the 1976-77 and 1978-79 school years are presented in this Section. Comparative data on black and white enrollment and rates of participation are included.

### A. Data Sources

The sources of data are the 1976-77 and 1978-79 OCR surveys. The 1978-79 data are based upon a preliminary analysis performed in April 1979. The 1976-77 statistics are projections based upon a sample of 3700 Local Education Agencies. In 1978-79, 6000 LEA's were surveyed.

Race/Ethnicity data were collected in 1978-79 for the five "non-physical handicapping" conditions only. The five categories are: Educable Mentally Retarded (EMR), Trainable Mentally Retarded (TMR), Seriously Emotionally Disturbed (SED), Specific Learning Disable (SLD), and Speech Impaired (SI). These categories are often more difficult to diagnose, thus are more prone to subjective assessment, mislabelling and/or discrimination in the referral and placement process. Also, these categories accounted for 96% of all handicapped students in 1976, hence, they covered most of the population of interest.

B. Special Education Enrollment: 1976-77 - 1978-79

Table 1 presents enrollment data for hispanics, blacks, whites and all students for each category of handicapping condition; for all handicapped students; and for all elementary and secondary school students. The table presents data for each school year and shows the percentage change from 1976-77 to 1978-79. Although there is much consistency in the data from 1976-77 to 1978- 79, there are a few significant changes.

- Total enrollment in the five special education categories rose by 1.0% in 1978-79, from 2,556,000 to 2,582,000. White enrollment dropped by 3.4% while black and hispanic enrollment rose by 10% and 17% respectively.
- In 1976-77 blacks comprised 15% of all students in the nation, 21% of all special education students, and 38% of all EMR enrollment. Thus blacks appeared to be significantly overrepresented in EMR programs. In 1978-79 blacks comprised 17% of the total enrollment, 23% of the special education enrollment, and 41% of all EMR students—showing little change from 1976-77.
- Both black and hispanic enrollment in programs for the Specific Learning Disabled rose sharply in 1978-79. This may be considered a positive trend since it suggests that school districts are evaluating the education needs of minority students with greater accuracy and sensitivity then in the past. When compared with overall enrollment in special education, blacks were still underrepresented in the SLD category while hispanics were slightly overrepresented.

Table 1. National Summary Date By Race - 1976 and 1978
Source: OCR Survey (OS/CR 102)

| Handicap Category | Year % Change | Hispanic |  | Black |  | White |  | Total 1/ |  |
|---|---|---|---|---|---|---|---|---|---|
|  |  | Number | % of Total | Number | % of Total | Number | % of Total | Number | % of Total |
| Educable Mentally Retarded (EMR) | 1976 | 31,477 | 5 | 249,707 | 38 | 371,326 | 56 | 661,169 | 100 |
|  | 1978 | 28,625 | 5 | 245,481 | 41 | 313,977 | 53 | 596,163 | 100 |
|  | % Change | -9.1% | -- | -1.7% | -- | -15.4% | -- | -13.9% | -- |
| Trainable Mentally Retarded (TMR) | 1976 | 6,635 | 7 | 26,099 | 27 | 61,814 | 64 | 96,163 | 100 |
|  | 1978 | 6,834 | 7 | 27,553 | 30 | 57,004 | 61 | 93,147 | 100 |
|  | % Change | +3.0% | -- | +5.6% | -- | -7.8% | -- | -3.1% |  |
| Seriously Emotionally Disturbed (SED) | 1976 | 6,984 | 6 | 28,395 | 23 | 85,463 | 70 | 122,325 | 100 |
|  | 1978 | 6,020 | 5 | 29,522 | 24 | 87,007 | 70 | 124,106 | 100 |
|  | % Change | -13.8% | -- | +4.0% | -- | +1.8% | -- | +1.5% | -- |
| Learning Disabled (LD) | 1976 | 65,011 | 7 | 125,726 | 14 | 682,095 | 77 | 889,778 | 100 |
|  | 1978 | 87,804 | 9 | 165,124 | 17 | 688,159 | 72 | 906,514 | 100 |
|  | % Change | +35.1% | -- | +31.3% | -- | +.9% | -- | +7.9% | -- |
| Speech Impaired (SI) | 1976 | 49,803 | 6 | 116,103 | 15 | 605,360 | 77 | 768,814 | 100 |
|  | 1978 | 58,491 | 7 | 134,102 | 17 | 598,259 | 74 | 808,498 | 100 |
|  | % Change | +17.4% | -- | +15.5% | -- | -1.2% | -- | +5.2% | -- |
| Total 5 Categories | 1976 | 159,910 | 6 | 546,033 | 21 | 1,806,058 | 71 | 2,556,249 | 100 |
|  | 1978 | 187,774 | 7 | 601,782 | 23 | 1,744,406 | 68 | 2,582,428 | 100 |
|  | % Change | +17.4% | -- | +10.2% | -- | -3.4% | -- | +1.0% | -- |
| Total Enrollment In Nation | 1976 | 2,807,452 | 6 | 6,773,690 | 15 | 33,229,249 | 76 | 43,713,809 | 100 |
|  | 1978 | 2,884,454 | 7 | 7,036,583 | 17 | 31,077,568 | 74 | 41,933,474 | 100 |
|  | % Change | +2.7% | -- | +3.9% | -- | -6.5% | -- | -4.1% | -- |

1/ Totals include Asian Americans and American Indians

- For hispanics, blacks and whites, enrollment in EMR programs dropped, although the percentage drop in black enrollment was only 1.7% as compared with 9.1% and 15.4% drops for hispanics and whites respectively.

- In general, black participation varied significantly from that of whites in special education. These differences are presented in the next section.

## C. Specific Comparisons Between Blacks and Whites in Special Education: National Statistics for 1976-77 and 1978-79

### 1. Rates of Participation in Special Education

The percentage of blacks in special education is significantly higher than that of whites (see Table 2)

- In 1976-77, 546,000 or 8.1% of all black students were reported as being enrolled in special education as compared with 1,806,000 or 5.4% of all whites. In 1978-79, the rates were 8.5% and 5.6% for blacks and whites respectively. In each year the black rate was approximately 1.5 times greater than the white rate.

- In 1976-77, 249,000 or 3.7% of all blacks were enrolled in EMR programs as compared with 371,000 or 1.1% of all whites. Thus the rate of participation for blacks in EMR was 3.4 times greater that it was for whites. In 1978-79, the rates were 3.5% and 1.0% for blacks and whites in EMR; the rate for blacks was 3.5 times greater.

- In both 1976-77 and 1978-79, the black rates of participation were around twice and 1.5 times that of whites for TMR and SED programs respectively. These differences were large, but significantly less than that shown for EMR. Differences for programs for the Specific Learning Disabled and Speech Impaired were small.

Table 2. Relative Rates of Black and White Participation in Special Education: 1976-77 and 1978-79 School Years

| Categories | Race | 1976-77 | 1978-79 (preliminary data) |
|---|---|---|---|
| All Special Education (1) | Black | 8.1%(2) | 8.5% |
| | White | 5.4% | 5.6% |
| | % Difference(3) | 50.0% | 51.7% |
| EMR | Black | 3.7% | 3.5% |
| | White | 1.1% | 1.0% |
| | % Difference | 236.4% | 250.0% |
| TMR | Black | .38% | .39% |
| | White | .19% | .18% |
| | % Difference | 100.0% | 116.7% |
| SED | Black | .42% | .42% |
| | White | .26% | .28% |
| | % Difference | 61.5% | 50.0% |
| SLD | Black | 1.9% | 2.3% |
| | White | 2.1% | 2.2% |
| | % Difference | - 9.5% | 4.5% |
| SI | Black | 1.7% | 1.9% |
| | White | 1.8% | 1.9% |
| | % Difference | - 5.6% | - 0 - |

(1) Five programs

(2) Expressed as a percentage of total enrollment of the race/ethnic group in elementary and secondary schools

(3) Computed as: $\frac{\%\ \text{Black} - \%\ \text{White}}{\%\ \text{White}} \times 100$

2. Distribution of Special Education Students Within Specific Categories

Another analysis examined the way in which special education students were distributed among the five categories of handicapping conditions. Table 3 shows that there were significant differences between blacks and whites.

- In 1976-77, 46% of all Black special education students were in EMR programs as compared with 21% of all white special education students.
- In 1976-77, 23% of all black special education students were in programs for the Specific Learning Disabled as compared with 38% of all whites.
- In 1978-79, there were some improvements as the percentage of blacks in EMR dropped to 41% (versus 18% for whites), and the percentage of blacks in SLD programs rose to 27% (as compared with 39% for white students).
- Only 22% of black special education students were in programs for the Speech Impaired as compared with 34% of all white students. This represents no significant change from 1976-77.

D. State-to-State Variations in Students in Special Education

The 1976-77 OCR data showed wide variations between states in the rate of student participation in special education programs. The following facts illustrate this point:

- In the nation, 6.2% of the nations 44 million elementary and secondary school students were enrolled in special education programs.
- Among states this figure varied greatly, ranging from a low of 2.8% to a high of 10.0%.

Table 3. Distribution of Special Education Students By Categories of Programs: Percentage of Special Education Students in Each Category

| | 1976-77 | | 1978-79 | |
|---|---|---|---|---|
| Category | Black | White | Black | White |
| EMR | (1)<br>45.7% | 20.6% | 40.8% | 18.0% |
| TMR | 4.5 | 3.4 | 4.6 | 3.3 |
| SED | 5.2 | 4.7 | 4.9 | 5.0 |
| SLD | 23.0 | 37.8 | 27.4 | 39.4 |
| SI | 21.2 | 33.5 | 22.3 | 34.3 |
| Total | 99.9% | 100.0% | 100.0% | 100.0% |

(1) Interpret as "45.7% of all black students who were in special education in 1976-77 were in an EMR program".

- The five states with the highest rates of participation had 9.2% of their elementary and secondary school students reported in special education. These states accounted for 9.9% of the nation's special education students while accounting for only 6.6% of all students.
- The five states with the lowest rates of participation reported 3.7% of their students in special education. These states accounted for only 7.8% of all special education students while they contained 13.1% of all students.

## II. SUMMARY OF REGIONAL STATISTICS ON SPECIAL EDUCATION ENROLLMENT BY RACE/ETHNICITY: 1976-77

### A. General Description of Analysis

The 1976-77 OCR Survey Data were analyzed on a regional basis to identify differences in special education enrollment patterns throughout the nation. For purposes of this analysis the nation was divided into five regions, as shown in Table 4. Since Alaska and Hawaii were excluded, national totals will vary slightly from those presented in previous tables. A second source of differences from statistics presented in Section I is that in this Section the total enrollment in special education includes all categories of handicapping conditions. Data are provided for black, white and all students, and for EMR, SLD, and all special education programs.

### B. Special Education Enrollments by Region: 1976-77

Data on total enrollment in elementary and secondary schools, enrollment in EMR and SLD programs, and total special education enrollment are shown in Table 5. Table 6 shows the percentage distributions of enrollment EMR, SLD, and total special education among the five regions. The basic patterns identified in the national analysis of Section I are generally found in each region, however, there are some significant differences.

Table 4. STATE-BY-STATE ASSIGNMENT TO REGIONS

| NORTHEAST | BORDER | SOUTH | MID WEST | WEST | EXCLUDE |
|---|---|---|---|---|---|
| Connecticut | Delaware | Alabama | Illinois | Arizona | Alaska |
| Maine | District of Columbia | Arkansas | Indiana | California | Hawaii |
| Massachusetts | Kentucky | Georgia | Iowa | Colorado | |
| New Hampshire | Maryland | Florida | Kansas | Idaho | |
| New Jersey | Missouri | Louisiana | Michigan | Montana | |
| New York | Oklahoma | Mississippi | Minnesota | Nevada | |
| Pennsylvania | West Virginia | North Carolina | Nebraska | New Mexico | |
| Rhode Island | | South Carolina | North Dakota | Oregon | |
| Vermont | | Tennessee | Ohio | Utah | |
| | | Texas | South Dakota | Washington | |
| | | Virginia | Wisconsin | Wyoming | |

## Table 5 - Special Education Enrollment Data by Region
## 1976-77 School Year

| | | BLACK | | WHITE | | TOTAL |
|---|---|---|---|---|---|---|
| | | NUMBER | % OF TOTAL | NUMBER | % OF TOTAL | NUMBER |
| Nation:1/ | Enrollment | 6,770,000 | 15.7 | 33,100,000 | 76.6 | 43,200,000 |
| | EMR | 249,000 | 37.8 | 370,000 | 56.2 | 658,000 |
| | Learning Disabled | 125,000 | 14.2 | 678,000 | 77.0 | 880,000 |
| | Total in Sp. Ed. | 575,000 | 21.5 | 1,890,000 | 70.5 | 2,680,000 |
| Northeast: | Enrollment | 1,200,000 | 13.1 | 7,360,000 | 80.2 | 9,180,000 |
| | EMR | 25,000 | 27.2 | 60,000 | 65.2 | 92,000 |
| | Learning Disabled | 13,000 | 10.0 | 113,000 | 86.9 | 130,000 |
| | Total in Sp. Ed. | 68,000 | 17.5 | 296,000 | 76.3 | 388,000 |
| Border: | Enrollment | 628,000 | 17.0 | 2,960,000 | 80.0 | 3,700,000 |
| | EMR | 23,000 | 31.1 | 49,000 | 66.2 | 74,000 |
| | Learning Disabled | 24,000 | 26.4 | 64,000 | 70.3 | 91,000 |
| | Total in Sp. Ed. | 68,000 | 23.8 | 210,000 | 73.4 | 286,000 |
| South: | Enrollment | 3,160,000 | 26.8 | 7,710,000 | 65.3 | 11,800,000 |
| | EMR | 149,000 | 61.6 | 83,000 | 34.3 | 242,000 |
| | Learning Disabled | 59,000 | 22.6 | 170,000 | 65.1 | 261,000 |
| | Total in Sp. Ed. | 312,000 | 36.5 | 473,000 | 55.4 | 854,000 |
| Midwest: | Enrollment | 1,250,000 | 11.4 | 9,410,000 | 85.5 | 11,000,000 |
| | EMR | 44,000 | 23.5 | 138,000 | 73.8 | 187,000 |
| | Learning Disabled | 17,000 | 8.5 | 176,000 | 88.4 | 199,000 |
| | Total in Sp. Ed. | 92,000 | 13.5 | 567,000 | 83.3 | 681,000 |
| West: | Enrollment | 528,000 | 7.0 | 5,700,000 | 73.4 | 7,560,000 |
| | EMR | 8,000 | 12.7 | 40,000 | 63.5 | 63,000 |
| | Learning Disabled | 12,000 | 6.0 | 155,000 | 77.9 | 199,000 |
| | Total in Sp. Ed. | 35,000 | 7.4 | 348,000 | 73.7 | 472,000 |

1/ Excludes Hawaii and Alaska

## Table 6 - Regional Distribution of Special Education Students
1976-77 School Year

| | % OF ALL STUDENTS IN SCHOOL | % OF ALL SPECIAL EDUCATION STUDENTS | % OF ALL EMR STUDENTS | % OF ALL STUDENTS IN SLD PROGRAMS |
|---|---|---|---|---|
| Nation | 100% | 100% | 100% | 100% |
| Northeast | 21 | 14 | 14 | 15 |
| Border | 9 | 11 | 11 | 10 |
| South | 27 | 32 | 37 | 30 |
| Midwest | 25 | 25 | 28 | 23 |
| West | 18 | 18 | 10 | 23 |

| | % OF ALL BLACK STUDENTS IN SCHOOL | % OF ALL BLACKS IN SPECIAL EDUCATION | % OF ALL BLACKS IN EMR PROGRAMS | % OF ALL BLACKS IN SLD PROGRAMS | % OF ALL WHITE STUDENTS IN SCHOOL | % OF ALL WHITES IN SPECIAL EDUCATION | % OF ALL WHITES IN EMR PROGRAMS | % OF ALL WHITES IN SLD PROGRAMS |
|---|---|---|---|---|---|---|---|---|
| Nation | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| Northeast | 18 | 12 | 10 | 10 | 22 | 16 | 16 | 17 |
| Border | 9 | 12 | 9 | 19 | 9 | 11 | 13 | 9 |
| South | 47 | 54 | 60 | 47 | 23 | 25 | 22 | 25 |
| Midwest | 18 | 16 | 18 | 14 | 28 | 30 | 37 | 26 |
| West | 8 | 6 | 3 | 10 | 17 | 18 | 11 | 23 |

- The Northeast, with 9,180,000 students, accounted for 21% of the nation's total enrollment, but only 14% (388,000) of all students in special education.

- Conversely, the Southern and Border states contained 36% of all students and 43% of all special education.

- The South, with 3,160,000 black students, accounted for 47% of the nation's total black enrollment. The South contained 54% (312,000) of all black in special education, and 60% (149,000) of all Blacks in EMR.

- The West contained 18% of all students but had only 10% of all EMR participants. Conversely, 23% of all students in SLD programs resided in the Western states.

- In the South, 26.8% of all students were black, 36.5% of all special education students were blacks, and blacks comprised 61.6% of all EMR students.

- In general, the pattern of substantial overrepresentation of blacks in EMR programs and underrepresentation of blacks in SLD programs was observed in each region. Only in the Border states did blacks appear to be overrepresented in SLD programs.

## C. Comparisons Between Blacks and Whites in Special Education By Region: 1976-77

### 1. Rates of Participation in Special Education

The rates of black and white participation in special education varied by region. Table 7a shows the regional percentages of all elementary and secondary school students enrolled in EMR, SLD, and all special education.

- In the nation, 6.2% of all elementary and secondary school students were enrolled in special education. This varied by region, from a low of 4.2% in the Northeast to a high of 7.7% in the Border States.
- In the Southern and Border States respectively, 9.9% and 10.8% of all blacks in school were enrolled in special education as compared with 6.1% and 7.1% of all whites. In contrast, the Northeast and West showed only 5.7% and 7.1% of their black students in special education.
- In the South 4.7% of all blacks in school were enrolled in EMR programs as compared with 1.1% of all whites; the black rate being 4.3 times greater. The rates for blacks in the Northeast and West were 2.1% and 1.5%.
- Total rates of participation in EMR programs for all students varied from a high of 2.1% in the South to .8% in the West. Thus the South showed a rate which was 2.6 times higher than the West.
- With the exception of the Border States, higher percentages of whites were enrolled in programs for the Learning Disabled. In the South, 2.2% of all whites students were in these programs as compared with 1.9% of the blacks.

## 2. Distribution of Special Education Students Within Specific Categories

The percentage of all special education students in EMR and SLD programs for each region are shown in Table 7b.

- In the South and Midwest 47.8% of all black special education students are in EMR programs as compared with respective rates of 18.9% and 18.4% in SLD programs for these regions.

Table 7: Special Education Participation Rates: By Region
1976-77 School Year

| | | Nation[1/] | Northeast | Border | South | Midwest | West |
|---|---|---|---|---|---|---|---|
| a) Percentage of All Students in Programs | | | | | | | |
| % of Students in Special Education | Black | 8.5% | 5.7% | 10.8% | 9.9% | 7.4% | 6.6% |
| | White | 5.7 | 4.0 | 7.1 | 6.1 | 6.0 | 6.1 |
| | Total | 6.2 | 4.2 | 7.7 | 7.2 | 6.2 | 6.2 |
| % of Students in EMR Programs | Black | 3.7 | 2.1 | 3.7 | 4.7 | 3.5 | 1.5 |
| | White | 1.1 | .8 | 1.7 | 1.1 | 1.5 | .7 |
| | Total | 1.5 | 1.0 | 2.0 | 2.1 | 1.7 | .8 |
| % of Students in Programs for the Learning Disabled | Black | 1.8 | 1.1 | 3.8 | 1.9 | 1.4 | 2.3 |
| | White | 2.0 | 1.5 | 2.2 | 2.2 | 1.9 | 2.7 |
| | Total | 2.0 | 1.4. | 2.5 | 2.2 | 1.8 | 2.6 |
| b) Percentage of Special Education Students in Programs | | | | | | | |
| % of All Special Education Students in EMR Programs | Black | 43.3 | 36.8 | 33.8 | 47.8 | 47.8 | 22.9 |
| | White | 19.6 | 20.3 | 23.3 | 17.5 | 24.3 | 11.5 |
| | Total | 24.6 | 23.7 | 25.9 | 28.3 | 27.5 | 13.3 |
| % of All Special Education Students in Programs for the Learning Disabled | Black | 21.8 | 19.1 | 35.3 | 18.9 | 18.4 | 34.3 |
| | White | 35.9 | 38.2 | 30.5 | 35.9 | 31.0 | 44.5 |
| | Total | 32.8 | 33.5 | 31.8 | 30.1 | 29.2 | 42.2 |

1/ Excludes Hawaii and Alaska

- In the South 17.5% of all white special education students are in EMR programs vs. 35.9% in SLD.

- In the Border and Western states this relationship is reversed with more blacks in SLD programs than in programs for EMR students. However, in all regions the percentage of black special education students in EMR is much higher than the percentage of whites.

### D. State-to-State Variations in the Enrollment of Blacks in EMR

A review of the state level data for 1976-77 revealed significant variations among the states.

- Three states reported that 6.6% of their black elementary and secondary school students were in EMR programs while four states reported that 1.7% or less of the black student population was in EMR.

- Eleven states reported that more than 50% of all black special education students were in EMR. Two southern states had more than 70% of the black special education students in EMR.

## III. SUMMARY OF NATIONAL STATISTICS ON MAINSTREAMING

### A. Data Collected

In both the 1976-77 and 1978-79 surveys, OCR collected data on time spent in special education programs. For each category of handicapping condition, enrollment data were collected for:

1) all students in special education classes for less than ten hours per week (mainstreamed)
2) all students in special education classes for more than ten hours per week, but less than full time
3) all students in special education full time (isolated)

## B. Trends in Mainstreaming

Table 8 presents the enrollment in each category of handicapping condition for the 1976-77 and 1978-79 school years. The percentage of students in each time classification was computed. For 1978-79, estimates of the percentage distributions were developed from preliminary data.

A comparison of 1976-77 and 1978-79 data shows a general increase in the degree to which handicapped children are being mainstreamed. That is, a smaller percentage of handicapped students were reported as being in special education classes full time in 1978-79.

- The percentage of handicapped students in full time special education was lower in 1978-79 than 1976-77 in seven of ten categories of handicapping conditions. The overall percentage in full time programs dropped from 27% to 22%.
- The proportion of EMR students in full time special education dropped from 55% to 43%. This represents a 22% reduction in the proportion of full time students.
- The proportion of Orthopedically Impaired students in full time programs dropped from 73% to 57%. This was accompanied by a 75% increase in the proportion of such children in special education classrooms for less than 10 hours per week. This is significant because there appears to be little educational justification for large percentages of such students spending all of their time outside the regular classroom.

Table 8: Distribution of Students in Special Education By Time Spent in Programs: 1976-77 and 1978-79 School Years

| Category of Handicapping Condition (1) | 1976 Enrollment in Special Education | % of Students in special ed. less than 10 hours per week | | % of Students in special ed. more than 10 hours but less than full time | | % of Students in special ed. full time | |
|---|---|---|---|---|---|---|---|
| | | 1976-77 | 1978-79(2) | 1976-77 | 1978-79 | 1976-77 | 1978-79 |
| Ed. Mentally Retarded | 661,170 | 13% | 15% | 32% | 41% | 55% | 43% |
| Tr. Mentally Retarded | 96,163 | 1 | 3 | 5 | 8 | 93 | 89 |
| Ser. Emotionally Dist. | 122,326 | 31 | 30 | 20 | 22 | 49 | 48 |
| Learning Disabled | 889,778 | 63 | 60 | 21 | 27 | 15 | 13 |
| Speech Impaired | 786,815 | 95 | 96 | 3 | 2 | 2 | 2 |
| Orthopedically Impaired | 30,462 | 16 | 28 | 9 | 14 | 73 | 57 |
| Blind/Visually Impaired | 12,755 | 52 | 62 | 20 | 18 | 27 | 20 |
| Deaf/Hard of Hearing | 35,857 | 30 | 36 | 17 | 22 | 52 | 42 |
| Other Health Impaired | 29,509 | 51 | 54 | 15 | 7 | 32 | 39 |
| Multi-handicapped | 31,569 | 14 | 10 | 17 | 16 | 68 | 74 |
| Total | 2,696,404 | 55% | 57% | 17% | 21% | 27% | 22% |

(1) Categories used for 1976-77 OS/CR 101-102 Survey
(2) 1978-79 Estimates based on preliminary data

- The proportion of Blind/Visually Impaired and Deaf/Hard of Hearing students in full time special education dropped from 27% to 20%, and 52% to 42%, respectively.

- The proportion of students categorized as Other Health Impaired who were in special education full time increased from 32% to 39%. Similarly, for Multihandicapped students this figure increased from 68% to 74%. In both categories there appears to be a significant increase in enrollment in 1978-79, based on a preliminary estimate. Thus, the higher proportion in full time special education may reflect the fact that such students are no longer being placed in state operated or private facilities for the handicapped. This possible trend in deinstitutionalization will result in more students receiving their education in the "least restrictive environment".

### C. Regional and State Distribution

The 1976-77 percentages of EMR and SLD students in full time special education was computed for each geographic region as shown in Table 9.

- The percentage of EMR students who spent full time in special education classes ranged from a low of 44% in the South to a high of 69% in the Northeast.

- The percentage of students in SLD programs full time varied from 9% in the South to 23% in the Northeast.

- At the state level, there was significant variation in the proportion of EMR students who spent full time in the special education classroom. The minimum was 5% and the maximum is 82%. Ten states show EMR full time rates of less than 30%, and thirteen states hand more than 60% of their students in full time programs.

- For SLD students in full time programs, state data showed less variation. Twenty-six states showed

> rates of 10% or less, forty had less than 20% of their students in full time programs; and eleven had rates greater than 20%, with a maximum of 38% reported.

Table 9: Percentage of EMR and SLD Students in Full Time Special Education: 1976-77 Data By Region

| Region | % of EMR Students in Full Time Special Education | % of SLD Students in Full Time Special Education |
|---|---|---|
| Nation | 55% | 15% |
| Northeast | 69 | 23 |
| Border | 52 | 13 |
| South | 44 | 9 |
| Midwest | 63 | 15 |
| West | 56 | 19 |

D. Concentration of Handicapped Students in Schools

The 1978-79 data were analyzed to determine the distribution of handicapped students between the country's elementary and secondary schools. In general, handicapped students appear to be well integrated into the nation's schools in terms of location of services offered.

> Of the 2.6 million special education students reported, 94% were being served in schools where the proportion of handicapped students was less than 30% of total enrollment. Approximately 63,000 schools were in this category.

- Only 3.8% (101,000) of special education students attended schools which served exclusively handicapped students. There were approximately 1200 such schools identified.
- Only 15% of the estimated 76,000 schools in the nation did not provide any special education.

## IV. IDENTIFICATION OF HANDICAPPED STUDENTS AND NUMBER UNSERVED: 1978-79

### A. Data Collected

The 1978-79 survey asked each participating Local Education Agency to provide a count of all resident school age children evaluated as needing special education services. It also asked for the number of children who were being served in any special education program, either by the reporting LEA, another LEA in a cooperative arrangement, a private or public institution, or in a homebound setting.

It should be noted that similar data were collected in 1976-77, however, the definitions of handicapping conditions were not consistent with the current BEH definitions. For this reason the 1976-77 data are not presented in this section.

Also, as of this writing, state and regional estimates of total enrollment for 1978-79 were not available. Estimates of the percentage of students needing special education services were based on 1976-77 enrollment data.

## B. Regional Estimates of Students Identified as Needing Special Education

Table 10 contains the results of an analysis of preliminary 1978-79 data. Counts of students in special education are larger in this table than those shown in previous sections since students served outside of the public school systems are included. The table shows the number of students in need of special education and the percentage of all elementary and secondary school students so identified.

- In the nation 2,943,000 students (6.8% of the total elementary and secondary school enrollment) were identified as needing special education.
- The percentage of students identified ranged from a low of 5.7% in the Northeast, to a high 8.7% in the Border States. Thus students were identified in the Border States at a rate which was 1.5 times higher than that shown in the Northeast.

## C. Number of Students Unserved

Table 10 shows that 2,848,000 received special education services in 1978-79 but that a significant number were unserved.

- A total of 95,000 students who were evaluated as needing special education were not enrolled in a program. This was 3.2% of all students identified as needing these services.
- The South, with 4.1% unserved, showed the highest rate and number (36,000) not receiving appropriate services.
- The West had the lowest proportion, 2.5%, unserved; and the Northeast showed only 2.7%.
- Since OCR survey data was collected during October of the school year, it is likely that some of the students counted as unserved were ultimately placed in programs.

Table 10. Handicapped Students Identified and Unserved By Region: 1978-79 School Year

| Region | Total Enrollment in 1976(1) | Total Identified As Needing Special Education: 1978(2) | % Of All Students Identified As Needing Special Education | Number Served By Special Education(3) | Number Needing But Not Receiving Special Education | % Needing But Not Receiving Special Education |
|---|---|---|---|---|---|---|
| Nation | 43,200,000 | 2,943,000 | 6.8% | 2,848,000 | 95,000 | 3.2% |
| Northeast | 9,180,000 | 520,000 | 5.7 | 506,000 | 14,000 | 2.7 |
| Border | 3,700,000 | 323,000 | 8.7 | 311,000 | 12,000 | 3.7 |
| South | 11,800,000 | 887,000 | 7.5 | 851,000 | 36,000 | 4.1 |
| Midwest | 11,000,000 | 729,000 | 6.6 | 708,000 | 21,000 | 2.9 |
| West | 7,560,000 | 484,000 | 6.4 | 472,000 | 12,000 | 2.5 |

(1) From 1976-77 OCR Survey
(2) Preliminary Data from 1978-79 OCR Survey
(3) Includes all children receiving special education in any school setting, or at home. This does not include students for whom full payment of costs is not provided by public funds.

*Exhibit No. 16*

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

AUG 5 1980

Mr. Herbert H. Wheeless
Project Director of Consultations
Office of Congressional and Public Affairs
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Wheeless:

This is in response to your letter of June 20 requesting a statement of record concerning certain issues raised in the recent consultation entitled Civil Rights of Issues of Handicapped Americans: Public Policy Implications. The sections of the transcript you enclosed appear to identify five issues which directly concern the Bureau of the Census. A listing and a discussion of these issues follow.

1. Whether the Bureau of the Census is working with other agencies to try to define the extent of various types of handicaps in order to better administer affirmative action education programs. The Census Bureau has been involved in several programs designed to produce data on the number and characteristics of handicapped children. Between 1963 and 1970, the National Health Examination Survey of Children and Youth which was sponsored by the National Center for Health Statistics (NCHS), collected extensive data on the school and health characteristics of persons 6 to 17 years of age. The two agencies cooperated in a project that involved not only the usual household interview, but a medical examination by a pediatrician, achievement and psychological tests given by a psychologist, teacher assessment of special educational needs and parental assessment of early childhood development. The data were analyzed in a series of reports prepared by the Stanford Research Institute under contract with the (then) Department of Health, Education, and Welfare (HEW).

   The 1976 Survey of Income and Education (SIE) was sponsored by HEW and conducted by the Bureau of the Census. The survey included questions on the disability status of children and adults and on the condition responsible for the disability. Analytical tables were prepared by the Census Bureau and have been distributed to interested persons. An important feature of the survey was the large sample size. The sample of 150,000 households was large enough to provide some data at the State level.

   As part of the preparatory work for the 1980 census, the Bureau conducted a National Content Test (NCT) in 1976. The disability item that appeared on the NCT questionnaire went well beyond the work disability question that had been asked in the 1970 census. The NCT disability item obtained information on the ability to do a number of activities in an attempt to meet the data needs that had been voiced by program planners and by persons within the disabled community. Unfortunately, an evaluation of the reliability of the responses to the expanded items showed that many of them were unreliable (especially those relating to limitations in the ability to do regular schoolwork). The evidence of unreliability led the Census Bureau to adopt a shortened and simplified disability item for the 1980 questionnaire. The item adopted concerned the abilities to work at a job and to use public transportation. A memorandum presenting an evaluation of the NCT disability items is available from the Bureau.

The Bureau recently conducted a pretest of a child health supplement that is scheduled to be asked as part of the 1981 National Health Interview Survey (sponsored by NCHS). The supplement will provide very detailed information about the health status of children and includes questions about the possible need for special school services. Further information about the plans for this supplement may be obtained from the Division of Health Interview Statistics, NCHS.

2. Whether a committee comprised of representatives of the disabled community (similar in nature to the Census Advisory Committees on the Black, Spanish Origin, and Asian and Pacific Americans Populations) was set up to advise the Bureau of the Census on the 1980 census.

There was no such committee. The views of the disabled community were received primarily through three sources. The first of these was the series of local meetings that the Bureau sponsored throughout the country during the planning period for the 1980 census. The second source was the set of unsolicited letters from persons within or associated with the disabled community. The third source was the set of recommendations adopted by the Disability and Health Committee of the Federal Agency Council on Demographic Censuses. The latter group included representatives from those Federal agencies with important interests in programs to serve the disabled.

3. Whether a question on disability status (at least a question on veterans disability ratings) could be added to the Current Population Survey.

This is an issue of concern to both the Bureau and the Bureau of Labor Statistics. There are at least two issues concerning the collection of disability data in the Current Population Survey (CPS). The first is whether it is possible to produce data on the labor force status of disabled persons as part of the basic monthly survey. The second is whether the topic of disability could be covered in a periodic (e.g. annual) supplement. It is the understanding of the Census Bureau that both of these issues are still open to consideration. In fact, the new income supplement that is asked in the March CPS does contain a question that is designed to identify work-disabled persons.

It should also be noted that the questionnaires used in the 1979 Income Survey Development Program (ISDP) (the developmental phase of what is intended to be a major new survey of income and program participation) contained a number of questions relating to disability status. Among the disability items were questions relating to the ability to work at a job and to do certain physical tasks and questions about veterans disability ratings. The ISDP involved six visits to a panel of approximately 10,000 households. Interviewing began in early 1979 and ended in mid-1980. Most of the disability questions were asked during the second visit to the panel (in May, June, and July of 1979). Because of the experimental nature of the program, a final data file from the second visit is not yet available. Such a file is expected to be available soon and an analysis of the data will begin at that time. It is hoped that certain preliminary results will be available within the next 6 to 12 months.

4. The need for various agencies to work out together a definition of the disabled community and the various possible subcategories (definitions which seem necessary if goals and timetables are to be adopted).

The Rehabilitation Act Amendments of 1974 define a handicapped individual as "a person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment." It is the task of survey designers to translate this definition (or some modification of this definition) into concepts which are measurable in a household survey.

The major disability surveys of the recent past include the Surveys of Health and Work Characteristics (SHWC) sponsored by the Social Security Administration, the Health Interview Surveys (HIS) sponsored by NCHS and the SIE sponsored by HEW. The latter surveys provided information on the disability status of children and the elderly as well as those of working age. The SHWC provided information on the working age population only. The questions used to identify work-disabled persons were similar in each of the three surveys although the HIS did not ask the work disability questions for women whose main activity was keeping house. There were important differences between the SIE and the HIS in the questions which were asked in order to determine the disability status of children and the elderly.

There is, at present, an interagency group that is very concerned about the design and selection of the questions which should be asked in order to identify the disabled population. The Disability Committee of the Federal Agency Council on Demographic Censuses was organized to advise the Bureau on the 1980 census. The Disability Committee made certain recommendations regarding the design of the 1980 disability item and also recommended that a follow-on survey of disabled adults be conducted after the 1980 census. The Bureau accepted this recommendation and included money for a postcensus disability survey in its budget request for fiscal year 1981. The request for funds was turned down because the Office of Management and Budget felt that such a survey should be paid for by those agencies which had an important interest in programs to serve the disabled.

The Disability Committee remained active during the discussions regarding the funding of the proposed postcensus disability survey. Various subcommittees made recommendations concerning specific areas and Census Bureau staff members took the recommendations and worked them into a questionnaire. In late 1979, the Bureau decided to conduct a pretest of the survey on the grounds that the pretest was likely to produce important new methodological information and because there appeared to be a reasonable chance that the actual survey would, in fact, be funded.

The pretest was conducted on a sample of 2,000 housholds in January and February of this year. Certain early results are now available and more extensive results are expected within a month or two. A copy of the pretest questionnaire is enclosed.

5. Whether the proposed 1982 Postcensus Disability Survey will be conducted.
The Office of Federal Statistical Policy and Standards (OFSPS) is coordinating the effort to secure funds from those agencies which have an important interest in programs to serve the disabled. The Bureau has advised OFSPS that there be a commitment of funds by October 1980 if there is to be a 1982 survey.

I hope that the above material will answer the questions raised at the consultation. Please contact me if you have any further questions.

Sincerely,

George Hall

GEORGE E. HALL
Associate Director
Bureau of the Census

Enclosure

**UNITED STATES DEPARTMENT OF EDUCATION**
WASHINGTON, D.C. 20202

JUL - 8 1980

Mr. Herbert H. Wheeler, Director
Consulation on Civil Rights Issues
  of Handicapped Americans
U.S. Commission Civil Rights
Washington, DC 20425

Herb

Dear Mr. Wheeler:

This is in response to your requests of June 6 and June 11, 1980 regarding the proceedings of the consulation entitled A Consulation on Civil Rights Issues of Handicapped Americans: Public Policy Implications.

In response to Commissioner Horn's question, it is my understanding that the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in the former Department of Health, Education and Welfare rather than the Office for Civil Rights involved itself with the Bureau of the Census in the area of statistical information on handicapped persons. The thrust of those efforts was to work through the National Center for Education Statistics to include information on handicapping conditions in the 1980 Census.

I hope that this is information is helpful. Please contact me on 245-1973 if I can be of any further assistance.

Sincerely,

Rudy Frank
Acting Director
Division of External Technical Assistance
  Office for Civil Rights

## *Exhibit No. 17*

### BALANCE OF STATEMENT

Peltz: The balance of my statement should also answer Commissioner Horn's questions on our outreach efforts to serve incarcerated veterans, skipped over at the request of Chairman Flemming.

In answer to Vice Chairman Horn's question about learning disabilities, the Department of Medicine and Surgery advises the following:

1. 166,068 patients were examined and tested for learning disabilities.
   - a. 129 patients were found with mental retardation, most were borderline.
   - b. 4 patients had learning disabilities.

VA's outreach efforts are directed towards an estimated 125,000 veterans incarcerated in Federal, State, and local prisons and jails. It is estimated that 72 percent have received Honorable or General Discharges from military service.

VA representatives visit the 319 major Federal and State prisons/penitentiaries at least twice a year in all 50 states. Follow-up and on-call service is provided depending on the need. Some regional offices have also developed relationships with local, city, and county jails; prison farms; and the courts. It is estimated that 40,000 veterans are incarcerated in these institutions, mostly temporary and pending trail.

The main thrust of the visit is to inform the veteran that their eligibility to veterans benefits did not terminate because they were convicted of a crime. Visits are made to counsel veterans individually or to conduct group discussions and siminars. Visits are also made to provide orientation and veterans benefits briefings to prison officials.

The new VA Pamphlet 27-79-1, "Veterans Benefits--Inside . . . Outside," (copy attached) is being mailed to incarcerated veterans, jail administrators, prisoner assistance organizations, institutional library facilities, and other correction facility officials by all VA regional offices in cooperation with the American Correctional Association.

Since April 1975, 9339 visits have been made to 319 Federal, State, and local prisons or jails. Over 94,124 incarcerated veterans have been individually counseled and over 43,632 attended group sessions and seminars. There were 9,962 prison officials briefed.

DRUG AND ALCOHOL DEPENDENT VETERANS

VA medical services are provided through specialized treatment programs for veterans who are drug or alcohol dependent.

The programs involve, in addition to inpatient and outpatient care, initial outreach in the communities to inform veterans in need of such treatment of the availability of VA services.

In the Drug Dependency Treatment Program, the Outreach Rehabilitation Technicians (ORTs), extablished comprehensive programs of outreach activities. This is directed to the drug dependent and relapsed veteran in the community to bring him to the VA for treatment and assistance. Contacts are made with local community groups and liaison entities within the criminal justice system and travel to street corners to accomplish the DDT Program objectives. Staff members of the Alcohol Dependency Treatment facilities also develop contacts with local groups in the community.

There are 53 Drug Dependency Team programs, including satellite clinics operating in 27 states. The alcohol treatment facilities are located in every state except Alaska, Hawaii, and Idaho. Outreach contacts are continuing to increase over the prior years in both the drug and alcohol dependent programs

## AGED VETERANS AND DEPENDENTS

VA's outreach activities for the older veteran is maintained through liaison with HEW's Administration on Aging (AOA).

In cooperation with AOA, a working agreement was signed by the VA and 14 other Federal agencies, to provide Information and Referral (I&R) services to the elderly. VA field personnel are members of the 10 AOA Regional Councils for assistance to the elderly. They also maintain continuous contact with 570 area agencies on aging, planning, coordinating and co-sponsoring I&R workshops, to provide advice and information to the elderly.

## IN SERVING THE GENERAL VETERAN POPULATION

VA's Information Service's outreach activities cover all veterans benefits programs and VA services, making widespread use of mass media information dissemination.

A special outreach project was launched - "Operation Boost" - a national campaign to encourage increased enrollment in the G. I. Bill. Localized publicity and mobile vans were utilized in 11 states where the usage of educational benefits was below 50 percent; mobile vans, VA offices on wheels, had joined in "Operation Boost" with visits to 11 states to provide veterans benefits information and assistance to encourage veterans to file for their G.I. education benefits. Regional offices used the vans in outreach visits to rurual communities, economic and educationally depressed areas, special events at State Fairs, shopping centers, and Indian reservations far removed from VA. Operation Boost has been expanded as a national campaign with recorded spots over 6,109 radio stations and TV spots over 7,119 television stations. A brochure, Fast Facts, is being distributed throughout the Nation.

For those disabled veterans who cannot travel to the VA regional office the VA provides a toll-free telephone service. For the price of a local call he can reach a Veterans Benefits Counselor at the VA regional office who will provide veteran benefit information, advice and assistance. Toll-free telephone service allows for easy accessibility to the VA and is available in all 50 states. With FX lines to major metropolitan areas and WATS lines for other sectors, it provides the opportunity for the veteran to respond to VA's outreach activities.

Outreach efforts in communities far removed from the 172 VA hospitals and 58 VA regional offices are extensive. Itinerant service at 101 off-site Ambulatory Clinics/Satellites offer medical care to veterans in local communities, including special programs of mental health, social work service, and substance abuse treatment. There are also 63 itinerant points that offer veterans in local communities veterans benefits information and assistance.

Primarily concerned with veterans at colleges and training institutions our Vet-Reps on Campus also participate in outreach efforts. Motivational visits for disabled veterans in vocational rehabilitation training, visits to prisons, assistance to the educationally disadvantaged and the elderly and liaison visits to employers on VA OJT programs.

The VA in a special outreach effort is cooperating with the White House Veterans Federal Coordinating Committee's Outreach and Community Services Program. Pilot projects are being set up in Baltimore, Chicago, Detroit, Oakland, Seattle, Minneapolis, Boston, Atlanta, Newark, Los Angeles, and New York to be operational by the end of the year. Each project, with emphasis on community-based organizations, will utilize local, State, and Federal services available in the area. The target groups identified for special assistance are the disabled, disadvantaged, and Vietnam era veterans with multiple readjustment problems.

In enclosing, I have given a short outline of VA's outreach efforts to reach out, identify and serve our disabled veterans, unemployed veterans, educationally disadvantaged veterans, minority veterans, incarcerated veterans, aged veterans and those with psychological stress disorders. If there are any questions, I will be glad to clarify our activities in Veterans rights.

Thank you very much.

### Employment Assistance

If you apply for U.S. Federal Service employment you may be eligible for five-point preference on initial applications. Disabled veterans may be granted 10-point preference. State Employment Service offices also provide priority assistance. VA regional offices offer job-training programs, specialized assistance for service-disabled veterans and career development counseling.

### Insurance

Incarceration in itself does not deprive you of VA insurance benefits.

If you had National Service Life Insurance coverage and it has lapsed, you may be able to reinstate it provided you meet the necessary requirements.

Veterans Group Life Insurance may be available to you provided you had Servicemen's Group Life Insurance at the time you were released from active duty. You must apply for it within 120 days from date of release from active duty (if totally disabled, ask VA counselor) and meet necessary requirements.

If you had VGLI and it has lapsed, you may be able to reinstate it provided you meet necessary requirements.

For complete information on VA insurance benefits, write to the Veterans Administration Center, Post Office Box 8079, Philadelphia, Pa. 19101.

## VA Benefits Assistance In Brief . . .

Veterans ordinarily have 10 years from date of discharge, or effective date of an upgraded discharge, in which to use GI Bill benefits.

Home loan benefits are good for life and may be reused under certain conditions.

VA offers toll-free telephone service in all 50 States. Consult local directories in the white pages under U.S. Government for the number to call the VA for information on veterans benefits.

Write to the VA regional office nearest you, or see the Veterans Benefits Counselor who visits your institution periodically, if you need veterans benefits information or assistance.

The VA provides benefits information pamphlets and application forms to prisons.

In many prisons the VA works with peer-group organizations to assist veterans.

Legal assistance is not included in benefits provided by the VA.

Distribution:
FD

Per VA Form 3-7225 and 3-7225a
(Includes VBC and VROC, 1 each;
and
EX: VSO and AR, 1 each)

Veterans Administration
Department of Veterans
Benefits

Veterans Benefits
VA Pamphlet 27-79-1
April 1979

**Veterans Administration**

# Veterans Benefits

## Inside . . . Outside

Department of

# VA Benefits Inside...Outside

If you are in prison, on probation or on parole, you may still be entitled to certain Federal benefits provided by the Veterans Administration. This pamphlet is intended to make you aware of VA benefits to which you may be entitled.

Incarceration itself does not deny you eligibility for VA benefits. If you have an honorable or general discharge, you are eligible for VA benefits. If you received an undesirable or a bad conduct discharge, you may request determination of eligibility by the VA on the facts of your case. Dishonorable discharges are a bar to VA benefits.

A summary of major VA benefits follows. If you want more detailed information, ask your prison officials or the VA counselor on his or her next visit to your institution.

## To Apply For Any VA Benefit . . .

If you have the VA application form, complete and sign the application and mail it to the nearest VA regional office.

If you do not have the VA application form, write or telephone toll free to the nearest VA regional office and tell them what benefit or assistance you want. VA will take it from there.

A supply of VA application forms may be provided free to a prison official or to a veterans' self-help group in most institutions.

If you have never applied for a VA benefit before, you will need to send the VA a copy of your discharge paper (DD 214) with your application.

If you have lost your discharge papers the VA can help you with that too. Just write to us for Standard Form 180, "Request Pertaining to Military Records."

How do you find the address of the nearest VA regional office? Check your local telephone directory under the "U.S. Government" listing. VA addresses and telephone numbers are listed in the VA IS-1 Fact Sheet "Federal

## Medical Care

Hospital care cannot be offered by the VA to otherwise eligible veterans who are in prison if the VA is to be responsible for custody of the veteran or obligated to return the veteran to civil authorities. Outpatient treatment will not be provided by the VA at a penal institution; however, special arrangements can be made, with permission of prison officials, for special medical examinations for VA benefits.

## Home Loan Guaranty

Eligible veterans, who obtain loans through normal lending channels, may have their loans guaranteed by the VA. On home loans the maximum amount of the guaranty is $25,000, and on mobile homes $17,500. There is no expiration date for loan entitlement. You and your spouse must meet normal income and credit requirements. Income must have a proper relationship to the terms of repaying the loan and other expenses. You must also be able to certify that the property will be occupied as a personal residence.

## Vocational Rehabilitation

If you have a service-connected disability, rated 10 percent or more disabling, you may be eligible for vocational rehabilitation if the VA determines there is a need for training to overcome the handicap of such disability.

Costs of tuition, books and supplies will be paid by the Veterans Administration.

## Educational Assistance (GI Bill)

You may be able to complete high school, college, learn a trade either on the job or in an apprenticeship program under the GI Bill. Eligibility generally ends 10 years after date of release from active duty, or from effective date of an upgraded discharge, but not later than December 31, 1989. Courses must be approved by the State Approving Agency. Prison education offices can provide information

## Pension

Wartime veterans may be eligible for non-service-connected disability pension. Annual income and number of dependents are among factors considered in determining the amount of monthly payments. Veterans in receipt of VA pension will have payments terminated 61 days after imprisonment for a felony or misdemeanor. Payments may be resumed upon release from prison if the veteran again meets VA eligibility requirements. The VA may apportion and pay to a spouse or children the pension which the imprisoned veteran would receive.

## Compensation For Disability

The VA can pay you compensation if you were disabled by injury or disease incurred in or aggravated by active duty service in line of duty.

If you already have a service-connected disability rated by the VA you may wish to reopen a claim if your disability has become worse over the years.

## Burial Benefits

The VA is authorized to furnish an American flag to drape the casket of a veteran whose military service was other than dishonorable. An allowance, not to exceed $300, may be paid toward burial and funeral expenses of a wartime veteran. A plot or interment allowance, not exceeding $150, also may be paid if the wartime veteran is not buried in a national cemetery. Where the death is service connected, burial allowance up to $1,100 is payable in lieu of the basic burial and plot interment allowances.

## Review Of Discharges

Each military service maintains a Discharge Review Board with authority to make changes in discharges that were not awarded by a general court-martial or for medical reasons. The VA will provide you general advice and application forms if you wish to seek an upgrade in your

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*Exhibit No. 18*

## OFFICE OF HUMAN GOALS

## VETERANS ADMINISTRATION

by Irving Peltz

### FUNCTIONS

- Provides advice on matters pertaining to civil rights, equal employment opportunity, human rights, and affirmative action programs.
- Coordinates activities of the Federal women's and Hispanic employment programs.
- Processes discrimination complaints.
- Develops and monitors national affirmative action plan.
- Develops policy and standards for EEO program review.
- Plans and conducts EEO training.

*Exhibit No. 19*

**U.S. Department of Justice**

Civil Rights Division

*Office of the Assistant Attorney General* *Washington, D.C. 20530*

August 25, 1980

Mr. Louis Nunez
Staff Director
United States Commission
on Civil Rights
Washington, D. C. 20425

Dear Mr. Nunez:

I appreciated the opportunity to testify on May 13, 1980, before the Commission in its Consultation entitled Civil Rights Issues of Handicapped Americans: Public Policy Implications.

I am happy to respond to your request to provide for the record of that consultation a statement concerning the efforts of the Interagency Coordinating Council to help accelerate the movement to establish a uniform architectural accessibility standard for physically handicapped individuals at the Federal Governmental level. The questions and remarks of Vice Chairman Stephen Horn and Commissioner Designate Jill Ruckelshaus address the issue of a uniform federal accessibility standard and federal executive level efforts to accomplish this desirable goal. On August 18, 1980, the Architectural and Transportation Barriers Compliance Board published proposed minimum guidelines in the Federal Register (45 F.R. 5009). The Interagency Coordinating Council, as I stated in my testimony to the Commission, was established under Section 507 of the Rehabilitation Act amendments of 1978 (29 U.S.C. 794c) to promote efficiency and eliminate inconsistency among the various federal agencies responsible for implementing and enforcing Title V of the Rehabilitation Act of 1973, which contains the civil rights provisions of the Act.

I believe that the following portion of my formal testimony, as Chair of the Interagency Coordinating Council, before the House Subcommittee on Select Education of the Committee on Education and Labor in its oversight hearings on the Compliance Board on June 11, 1980, responds to your request and provides the background for the August 18, 1980, issuance of proposed minimum guidelines. The pertinent portion is as follows:

At its February 14 and March 13 meetings, the Council discussed what the appropriate federal response should be to the new "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People." The new standard specifications were then in draft form, but were subsequently published in May of this year. Until now, adherence to the previous standard specifications published by the American National Standards Institute, Inc., in 1961 and amended in 1971, or some standard which provides equivalent access, has constituted compliance with the requirements of the uniform federal agency § 504 regulations and has formed the basis for standards under the Architectural Barriers Act. The new standard is the product of a 5-year development and review process involving federal agencies, organizations representing the interests of handicapped persons, architectural and engineering groups and business interests.

The new ANSI Standard is a matter of interest to the Council for several reasons. Under authority of its § 504 lead-agency role, HEW has recommended that federal grant agencies provide in their § 504 regulations that design, construction or alteration of facilities conform to the then existing ANSI Standard on accessibility or some alternative providing equivalent access. After the President transfers § 504 coordination authority to the Justice Department, Justice must decide whether to endorse the new ANSI Standard for the § 504 agencies. Second, to the extent that the § 504 lead-agency and the Board adopt different standards, the potential for conflict arises as a result of their overlapping responsibilities under Title V of the Rehabilitation Act.

At the January 15 meeting of the Board, the Board declined to endorse the new ANSI Standard and approved the publication of an advance notice of proposed rulemaking to implement the Board's authority under § 502 to establish minimum guidelines and requirements for the standards issued by the four design standard-setting agencies under the ABA. Further, GSA on February 6, 1980, published a proposed new accessibility standard for non-residential buildings. At the same time, HUD seems committed to adopting the new ANSI Standard for its § 504 regulations and its Architectural Barriers Act standard.

All of these design standards may ultimately prove to be compatible, but the Council believes it appropriate to have the Federal Government support a unitary standard which would achieve widespread public and industry support and would avoid the confusion and inefficiency resulting from a proliferation of standards. Beyond these practical considerations is the relevance of OMB Circular A-119 (January 17, 1980) which provides that it is federal policy to "rely on voluntary standards ... with respect to federal procurement, whenever feasible and consistent with law and regulation pursuant to law." The policy of that Circular would appear to apply equally to grant programs.

This issue was discussed at the March 13 meeting of the Council with representatives from the President's Committee on Employment of the Handicapped and the four design standard-setting agencies. As a result of that meeting, the Board committed itself to publish a proposed rule by July 1980 [Note: the proposed rule was published on August 18, 1980] and a final rule by December 1980. The proposed rule will identify all modifications in the new ANSI Standard which the Board believes are necessary. The federal agencies which now do not have an available construction standard will adopt the Board's proposed rulemaking as an interim standard while those having a fully developed standard will have the option to adopt either the Board proposed rule as an interim standard or adhere to their present standards.

I hope that the foregoing information will be of assistance.

Sincerely,

Drew S. Days III

Drew S. Days III
Assistant Attorney General
Civil Rights Division

**Department of Justice**

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# STATEMENT

OF

DREW S. DAYS, III
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE
SUBCOMMITTEE ON SELECT EDUCATION
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

CONCERNING

THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
AND THE
INTERAGENCY COORDINATING COUNCIL

ON

JUNE 11, 1980

Mr. Chairman, thank you for extending to me the opportunity to discuss the recent activities of the Interagency Coordinating Council which relate to the Architectural and Transportation Barriers Compliance Board.

As you are probably aware, I appear before you with three assignments regarding handicapped persons' rights. I am Chairman-designee of the Interagency Coordinating Council, a member of the Architectural and Transportation Barriers Compliance Board, and the Assistant Attorney General heading the Justice Department Division that will soon have responsibility for coordinating the federal government's overall enforcement of section 504 of the Rehabilitation Act. I hope your subcommittee and others in the Congress will note with appreciation that as part of this Administration's commitment to a balanced budget and the careful spending of the taxpayers' funds, we have begun to require agency officials to function in multiple capacities.

While I speak lightly of this triple function I can assure you that all of us at the Department of Justice take extremely seriously our duty to enforce the federal laws designed to protect the rights of handicapped persons.

Our commitment has been intensified by the President's decision to give to the Department coordinating responsibility for §504. In announcing this decision on May 1 to the President's Committee on Employment of the Handicapped, when he became the first President since Lyndon Johnson to appear before that group, Mr. Carter said, "I intend * * * to see that the entire decade of the 1980's is one in which handicapped people have full access to our society, maximum independence, and the opportunity to develop and to use [their] full capabilities."

The Executive Order now in preparation to carry out the President's statement will provide the Department of Justice the coordinating authority that was held by the Department of Health, Education and Welfare for federally-assisted programs; it will also give new authority to coordinate federally-conducted programs.

I look forward to the new role that the Justice Department will play in this important effort. This morning, however, as you requested, my remarks will focus on the activities of the Interagency Coordinating Council. I will describe briefly the establishment, functions and composition of the Council and then inform you of its major activities on the issues relating to the Board.

The Council was established under the Rehabilitation Act Amendments of 1978 to promote efficiency and eliminate inconsistency among the various federal agencies responsible for implementing and enforcing Title V of the Rehabilitation Act of 1973, which contains the civil rights provisions of the Act, which include:

-- Section 501, providing for affirmative action in the Federal employment of handicapped persons. The Equal Employment Opportunity Commission (EEOC) has direct authority to enforce the requirements of §501 by virtue of Section 4 of the President's Reorganization Plan No. 1 of 1978 (5 U.S.C.A. App. II, 142 (1979 Supp. )).

-- Section 502, providing for the establishment of the Architectural and Transportation Barriers Compliance Board, composed of 11 public members and 10 Federal department and agency heads, charged with the enforcement of the Architectural Barriers Act of 1968, as amended (29 U.S.C.A. 792). The Act requires that -- after the effective date of August 12, 1968 -- certain Federally owned, occupied or financed buildings and facilities must be designed, constructed and altered so that they are accessible to and usable by the physically handcapped (42 U.S.C. 4151).

-- Section 503, providing for affirmative action in the employment of handicapped persons by Federal contractors having Federal contracts in excess of $2,500. Section 503 is enforced by the Department of Labor which is also charged under Executive Order 11758, §2 (39 FR 2075, January 17, 1974) with the responsibility (in consultation with the Department of Defense and the General Services Administration) to issue §503 implementing regulations.

-- Section 504, prohibiting discrimination on the basis of handicap in programs and activities receiving Federal financial assistance and (since 1978) programs and activities conducted by "any Executive agency or by the United States Postal Service." HEW previously coordinated the implementation of §504 by virtue of Executive Order 11914, (41 FR 17871, April 28, 1976) but only with respect to programs of Federal assistance. The Executive Order preceded the 1978 Rehabilitation Act Amendments which extended the reach of §504 to federally conducted programs and activities. As I have noted, the President has decided to place the coordinating responsibility in the Department of Justice.

The membership of the Council consists of the heads of the Departments of Health and Human Services , Labor, Justice, Education , and the heads of the Equal Employment Opportunity Commission, the Office of Personnel Management and the Board. At the request of James T. McIntyre, Jr., Director of the Office of Management and Budget, Attorney General Bell agreed in August 1979 to serve as the Council's first Chairman and appointed the Assistant Attorney General for Civil Rights as Chairman-Designee.

The other participating designees of the Council are: Roma J. Stewart, Director of the Office for Civil Rights, HHS; Donald Elisburg, Assistant Labor Secretary for Employment Standards Administration, Commissioner Armando Rodriguez of the EEOC; Jule M. Sugarman, Deputy Director, OPM; Cynthia Brown, Assistant Secretary for Civil Rights-designate, D.O.Ed.; and Guy McMichael, General Counsel of the Veterans Administration, representing the ATBCB Chairman, Max Cleland, the Veterans' Administrator. The Council held its organizational meeting in August 1979 and has held eight meetings since that time.

## AGENDA ISSUES

Since it began to operate, the Council has developed an agenda of issues it views as essential to the carrying out of its mission. Several of those relate directly to the Board.

a. Policy issues related to overlapping enforcement responsibilities under Title V of the Rehabilitation Act.

As noted above, the Board is principally involved in the enforcement of the Architectural Barriers Act (ABA). Further, as a result of the 1978 Rehabilitation Act Amendments, §502 of the Rehabilitation Act directs the Board to establish minimum guidelines and requirements for standards issued by four other Federal agencies (DOD, USPS, HUD, and GSA) under the ABA.

Concurrently, the uniform Federal agency §504 regulations require full program accessibility for program beneficiaries. As to existing buildings and facilities used in a federally assisted program, structural modifications are required under §504 regulations in the absence of feasible alternatives (e.g., relocation of the program to an accessible site). As to new construction (i.e., construction begun after the effective date of the relevant Federal agency's §504 regulation) buildings and facilities used in federally assisted programs must be barrier free.

Accordingly, grantees of Federal assistance may be subject to the jurisdiction of the Board under §502 of the Rehabilitation Act by their receipt of federal construction funds and also be subject under §504 to the jurisdiction of the Federal grant agency which either (1) provided the construction funds for the facility in question, or (2) provided Federal assistance to programs conducted in the federally funded structure. Thus, the enforcement and guideline setting responsibilities of the Board under §502 overlap with the corresponding responsibilities of the Federal grant agencies under §504. The Council believed it appropriate to address the problem of overlapping jurisdiction at an early date and requested the Board Staff and HEW -- as the lead-agency for §504 -- to confer to ensure the effective and consistent implementation of their respective statutory responsibilities.

The Board staff and HEW personnel exchanged memoranda and held meetings to resolve the legal and policy issues arising out of the jurisdictional overlap. At the March 13 meeting of the Council it was agreed that Jule Sugarman, Deputy Director of the Office of Personnel Management, would chair a meeting where all outstanding policy issues would either be resolved or referred by Mr. Sugarman to the Council with his recommendations for resolution.

Briefly, the most pressing policy issues related to (1) the sharing of technical assistance between the Board and HEW; (2) HEW and Board notification to each other and other interested Federal agencies of complaints, investigations and compliance reviews affecting the jurisdiction of the notified agency; and (3) cooperative efforts between HEW and the Board with respect to HEW complaint investigations and compliance reviews and procedures for ensuring the effectiveness of those efforts. Additional issues relating to transportation and communication are being deferred.

Those issues have now been resolved and incorporated into a draft memorandum of understanding between HEW and the Board. That memorandum was approved in substance by the Board at its May 16 meeting and also initialed by the Director of the Office for Civil Rights of HHS, Ms. Stewart.

b. Legal issues.

The jurisdictional overlap problems were compounded by the evident disagreement between the Board's staff and the staffs of the HEW Office for Civil Rights and its General Counsel's Office on the reach of the Board's jurisdiction under the Architectural Barriers Act.

In order to have this question adequately reviewed and evaluated, the Office of Legal Counsel of the Department of Justice was asked by the Interagency Coordinating Council to prepare a legal analysis. I have received a memorandum in response to that request, and it is now under review within the Department prior to distribution to the Council members. The issues addressed in that memorandum are: (1) whether the Act extends to buildings leased by a recipient of a federal grant or loan where the recipient uses the federal funds to make rental payments, and (2) whether the act covers only those buildings for which standards for design, construction, or alteration actually have been imposed, either by statute or by regulation.

c. ANSI Standards.

At its February 14 and March 13 meetings the Council discussed what the appropriate Federal response should be to the new "American National Standard Specifications for Making

Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People." The new standard specifications were then in draft form, but were subsequently published in May of this year. Until now, adherence to the previous standard specifications published by the American National Standards Institute, Inc. in 1961 and amended in 1971, or some standard which provides equivalent access, has constituted compliance with the requirements of the uniform Federal agency §504 regulations and has formed the basis for standards under the Architectural Barriers Act. The new standard is the product of a five year development and review process involving Federal agencies, organizations representing the interests of handicapped persons, architectural and engineering groups and business interests.

The new ANSI Standard is a matter of interest to the Council for several reasons. Under authority of its §504 lead-agency role HEW had recommended that Federal grant agencies provide in their §504 regulations that design, construction or alteration of facilities conform to the then existing ANSI Standard on accessibility or some alternative providing equivalent access. After the President transfers §504 coordination authority to the Justice Department, Justice must decide whether to endorse the new ANSI Standard for the

§504 agencies. Second, to the extent that the §504 lead-agency and the Board adopt different standards the potential for conflict arises as a result of their overlapping responsibilities under Title V of the Rehabilitation Act.

At the January 15 meeting of the Board, the Board declined to endorse the new ANSI Standard and approved the publication of an advance notice of proposed rulemaking to implement the Board's authority under section 502 to establish minimum guidelines and requirements for the standards issued by the four design standard-setting agencies under the ABA. Further, GSA on February 6, 1980 published a proposed new accessibility standard for nonresidential buildings. At the same time, HUD seems committed to adopting the new ANSI Standard for its §504 regulations and its Architectural Barriers Act standard.

All of these design standards may ultimately prove to be compatible, but the Council believes it appropriate to have the Federal government support a unitary standard which would achieve widespread public and industry support and would avoid the confusion and inefficiency resulting from a proliferation of standards. Beyond these practical considerations is the relevance of OMB Circular A-119 (January 17, 1980) which provides that it is Federal policy to "rely on voluntary standards . . . with respect to Federal procurement, whenever feasible and consistent with law and regulation pursuant to law." The policy of that Circular would appear to apply equally to grant programs.

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d. Funding and Staffing Needs of the Board.

At the request of the Office of Management and Budget, the Council considered the serious understaffing of the Board at its December 13, 1979 meeting. At that time the Council noted that the Board had more governing members (21) than authorized staff (18). Given the import of the

Board's program and its obvious inability to carry out its numerous statutory responsibilities at the current staffing level, the Council agreed to ask OMB for appropriate relief. The fiscal recommendations of the Council were based on a recently completed staff review prepared by HEW's Office of Human Development Services which in our view fully justified the Council's request to OMB for an FY '81 budget request of $3 million dollars, as authorized under the Rehabilitation Act Amendments of 1978 (29 U.S.C.A. 792 (i) (1979 Supp.) and the levying upon the Board's member agencies for the loan of slots for the remainder of FY '80. For the past three fiscal years, the funding for the Board has been essentially level at one million dollars, and HEW's budget had proposed no increase in that funding level for FY '81.

The second recommendation to OMB involved the role HEW had played in budget setting for the Board. The Council recommended that for future fiscal years the Board should be authorized by OMB to submit a separate line item budget, rather than having its budget submissions reviewed by HEW and made part of its budget request. In the Council's view the Board should function as a wholly independent agency. Given the Board's enforcement role under §502 of the Rehabilitation Act, the Council believes that the existing procedure resulted in an awkward dependency for the Board.

At the direction of the Council, I wrote to Mr. McIntyre on December 28, 1979 setting out the Council's recommendations. Thereafter, OMB included in the FY '81 budget request a $1 million dollar FY '80 supplemental appropriation which provided for 12 new permanent positions for the Board staff. For FY '81, the budget requests $2.3 million and 32 positions for the Board. The FY '81 budget request, I understand, appears as a line item in the Department of Education budget.

The funding and staffing problems experienced by the Board in the past have apparently been remedied, at least for FY '80 and '81, and my understanding is that the Board, although now housed for administrative purposes in the Department of Education, will operate as an independent agency with no fiscal overview exercised by the Department of Education.

CONCLUSION

Mr. Chairman, in conclusion I want to reiterate the commitment of the Department of Justice to improving coordination among the federal entities responsible for protecting the rights of handicapped persons. To some extent such coordination between the Architectural and Transportation Barriers Compliance Board and the Interagency Coordinating Council flows inevitably from the number of agency officials who are members of both groups. But sensitivity to the cooperative spirit in the Council's mandate, expressed in §507 of the Rehabilitation Act, requires that we extend our efforts at cooperation beyond what the mere structural arrangement dictates. We must pursue the federal government's enforcement of the statutory protections of handicapped persons with both vigor and consistency. Failure to do so will undermine in a fundamental way the goals incorporated in these laws.

This concludes my prepared statement. I will be glad to respond to any questions you may have.

*Exhibit No. 20*

Appendix Q, Footnote 33, page 191, Vol. II Page 5

Cornell Alumni News

May 1980

picketed the season's second military contractor, in the person of an interviewer from Litton Industries. Two students were taken into custody by campus police on misdemeanor charges of criminal mischief after they spilled blood and ashes in Carpenter Hall as part of the protest.

An Abstract Impressionist painting resides in the Johnson Museum of Art, a hostage to the turmoil in Iran. The painting, *Light in August* by Willem de Koonig, is owned by a museum in Tehran, and was part of an exhibition organized by the university which ran from March to December 1978. It was to be returned to Iran, but the chaos there made moving it for transit impossible. The Tehran museum asked for its return, but provided no means of insurance. "It's a very major painting," according to Thomas Leavitt, the Johnson's director. "Our first obligation is to the painting." He said he is awaiting further word from Iran.

The university expects to meet the June 3 federal deadline for making buildings and the rest of the campus accessible to handicapped students—in the endowed colleges. Delays have been prodigious in getting approval and funds for the statutory colleges, however, and they will not meet the deadline. Cost of the endowed work will run about $300,000, including curb cuts, washrooms, showers, an elevator, and ramps to buildings. A number of last-minute curb cuts asked by a student ran the cost up considerably.

Two blind students made known that the cuts, "A boon to persons in wheelchairs, are a liability" to the blind. They explained that guide dogs, trained to stop at curbs, unintentionally walk into the street at cut curbs. New laws permitting cars to turn right on red traffic lights present yet another problem for guide dogs trained to deal with traditional traffic flow. The students noted that guide dogs for the blind are now being sent to schools for added training to cope with the new hazards.

RNELL
J Sleeman

When the City of Ithaca was pressed to equip its buses with wheelchair lifts, lawmakers refused to follow the apparent federal requirement after learning that the university's transit bus that is equipped with a wheelchair lift has not had a wheelchair user since it went into service last year.

Thirty persons from China will attend a ten-week workshop on hotel management and tourism in Hawaii this summer, to be run by the Hotel school. The workshop is an outgrowth of a seminar conducted by Dean Robert A. Beck '42 last year in China under auspices of the tourism promotional firm in Hong Kong of Charles F. Feeney '56.

Six administrators and professors

## Unsolicited Papers

"Notes on the Human and Civil Rights of Handicapped People to Recreation"

80 MAY 5 A10:25

by

John A. Nesbitt, President
Special Recreation, Inc.
362 Koser Avenue
Iowa City, Iowa 52240

Submitted to

The U.S. Commission on Civil Rights
Washington, D.C. 20425
National and Regional Conferences and Consultations

Civil Rights Issues of Handicapped Americans: Public Policy Implications
May 13-14, 1980
Meeting Room A
Holiday Inn
Massachusetts Avenue and 14th Street at Thomas Circle, N.W.
Washington, D.C.

## Introduction

We must provide consumers, advocates, the public, professionals and legislators with a means of studying the philosophical, humanistic and civil aspects of equal opportunity for handicapped people in recreation.

This effort will complement similar efforts by people who are handicapped in non-recreation related areas such as architectural barriers, benefits, education, employment, hospital and medical matters, housing, insurance, transportation, vocational rehabilitation and legal representation.

This paper seeks to provide a start in study and discussion of the recreation rights of individuals who are handicapped.

## Rights and Recreation

There are a number of reasons for being concerned about the human and civil rights to recreation for people who are handicapped. First, the effort is aimed at defining prerogatives in society. For people who are handicapped, this defining of prerogatives serves to delineate equal opportunity. This activity in turn defines the roles and functions of consumers, of advocates and of professional personnel and public agencies.

Second, since 1964 there has been an overt effort within the United States to provide assurances of equal opportunity for people who because of racial or ethnic background or who because of sex have been denied equal opportunity. Most notably, these assurances have been provided through Title VI relative to racial or ethnic minorities and through Title IX for women.

More recently Section 504 of the Rehabilitation Act has sought to define the rights of people who are handicapped. In particular, Section 504 is regarded as the 'Civil Rights Act for the Handicapped'. Unquestionably, the right of handicapped to recreational opportunity, to recreation service, to facilities and to recreational employment and the services to make opportunity, access and employment possible, are an important dimension of the assurances anticipated through Section 504. Thus, those consumers, advocates and professionals who are concerned with the assurance of the human right to recreational opportunity and participation must be concerned with the civil processes necessary to achieve equal opportunity.

While Special Recreation, Inc. is very interested in the area of human and civil rights of people who are handicapped to equal opportunity in recreation, there is by no means any definitive statement of the human right to recreational opportunity nor is there any specific knowledge or insight into the civil procedures needed to assure the exercise of the civil right to equal opportunity in recreation. The following statement is to encourage interest in this area of activity.

## Human and Civil Rights

The idea of "a right" presumes that individuals are "entitled" to do, to behave, to perform or to receive something. One might say that a right entitles a person to certain "prerogatives". Broadly considered, "human rights" may be construed as those philosophical or ethical values that are adopted by a community, a nation, or a society. Statements of or on human rights are deductive setting forth guidelines, defining relationships and behavior and declaring the dignity and privileges to which individuals are entitled. However, issues in human rights may be classified as being philosophical and not legal. "Civil rights" by contrast are an active facet of the laws and regulations of a political unit or units, local, state, national or international. By way of illustration, we may presume or believe that voting is an inalienable universial human right. However, individuals may be denied their human right to vote unless there is a civil right to vote within the community's law and regulatory enactment and unless there is recourse to a judicial system when one's civil right is denied.

First, when it comes to community recreation for people who are handicapped there are definite problems between providers and receivers of services in communication, terminology and philosophy.

Second, it appears that most consumer spokespersons are more aware of and thus more concerned about issues such as employment, housing, architectural barriers and transportation than they are about issues having to do with recreational opportunity, participation and services.

Third, while we now have a clearer idea of a handicapped person's right to education (P.L. 94-142) we have limited awareness of handicaped people's right to participate in recreational activities, that is, activities including parks, museums, performing and plastic arts, outdoor recreation, etc., --all undertaken during free time. While we can gain consensus among consumers, advocates and professionals on the human right to participate in education and work we do not have a clear idea of what precisely a person is entitled to relative to recreation.

The implications of the foregoing discussion are that while the right to recreation activities may be broadly accepted, unless this human right is a functioning part of the laws and regulations of the land, then there is no actual guarantee to recreation opportunity for minorities, for women or for handicapped.

Operationally, we are aware that handicapped do not have proprotionate representation in the recreation pursuits of the American society. The fact that the park facility, recreation center or museum presents architectural restrictions, service and resource limitations and/or attitudinal barriers to participation and employment by handicapped denies the handicapped individual his or her human rights. Further, as the laws of the land are enacted by the legislators and interpreted by the courts, it is a fact that this denial is in violation of people's civil rights.

What we have experienced is unequal or preferential treatment of individuals based on social advantage, racial advantage, economic advantage, sex advantage, physical advantage and/or mental advantage. There have been a large number of preferential treatment recipients. These preferential treatment recipients' situations should be compared with the unequal prejudicial treatment recipients experienced by handicapped people.

The major areas of living where unequal opportunities are discerned are political expression (voting), education, employment and housing. The efforts of unequal opportunity impact on every phase of living, i.e., nutrition, health care, disease, injury, etc. Recreation is in fact an area where unequal treatment is enormous.

In considering recreation and the rights of disabled citizens, there are three major legislative enactments that bear study:

1. Title VI of the Civil Rights Act of 1964.
2. Title IX of the Education Amendments of 1972.
3. Section 504 of the Vocational Rehabilitation Act of 1973.
   (Executive Order 11914, signed by President Ford, April 28, 1976
   and Federal Register, May 17, 1976, pp. 20246-20380.

Just as the first two laws cited above seek to assure the civil rights of racial minority group members and women, Section 504 seeks to assure the civil rights of people who are handicapped.

Regarding Title VI and Title IX even though relatively little attention has been directed to the recreation implications of the laws we can build on some previous experience as we study the recreation implications of Section 504.

Accepting the fact of unequal treatment and opportunity, when efforts are undertaken to make opportunity equal or more equal for the handicapped person in recreation the first step to be taken is to examine the delivery system in attempting to discern key points where policies and practices can be effected which will result in equal opportunity for handicapped people. The following areas lend themselves to consideration.

| | |
|---|---|
| Facilities | - Lack of accessibility<br>- Lack of provision of special accomodating features, e.g., lowered drinking fountains, hand rails in toilets, etc. |
| Equipment | - Lack of adaptation of equipment.<br>- Failure to provide special equipment. |
| Services | - Failure to provide administrative, program, and leader personnel, i.e., either regular personnel who can meet reasonable expectations or special personnel as needed.<br>- Failure to provide coordinaton, program development, etc. |

| | |
|---|---|
| | - Failure to provide professional assessment, counseling, etc., for participants. |
| Scheduling | - Preference given to "preferential treatment recipients", i.e., the "able-bodied" are served first and where most convenient. |
| Transportation | - Failure to make existing transportation accessible.<br>- Failure to provide special transportation based on need. |
| Recruitment | - "Recruitment" limited to preferential treatment recipients, i.e., "able-bodied", versus recruitment activities such as "handicapped child find", handicapped recruitment," etc. |
| Scholarships | - In school and school related programs, preferential treatment given to "able-bodied", no scholarships offered to handicapped, no handicapped teams, etc., all levels, elementary, secondary and colleges/universities. |
| Selection of Activities | - Selection oriented to preferential treatment recipients, i.e., that only "able-bodied" can do versus selection of activities in which able-bodied and disabled can participate. No consideration of recreation activities oriented to special needs or interests of handicapped. Activities limited in variety, range of levels of performance and frequency. |
| Instructional Opportunity | - Instruction is all oriented to non-handicapped. Failure to provide special recreation education, special recreation skills instruction (for adaptation and modification), etc., for handicapped participants. |
| Levels of Performance | - Failure to allow for differing levels of performance of an activity, sport, etc., thus rejecting or excluding individuals such as handicapped who fail to meet a single standard. |
| Non-Segregated Participation | - Programming when provided oriented essentially to segregated programs and services, e.g., "Handicapped Dancers meets Thursday afternoon". |
| Media Coverage | - Failure to provide information for and about programs, services, etc. for handicapped citizens. |

| | |
|---|---|
| Non-Competence Based Restrictions on Participation | - Failure to relate to actual skills and competencies needed in accepting participants; rejecting participants simply because of disability or some assumed medical or health or safety restriction. |
| Non-Competence Based Restrictions on Employment | - Rejecting applicants simply because they are blind or have other disabilities.<br>- Blanket rejection of handicapped job applicants. Failure to hire based on actual skills, training and experience needed in relation to the job to be performed.<br>- Failure to employ handicapped based on presumed prejudice of co-workers, or the public, or the participants. |

We may ask, based on the foregoing, what constitutes equal opportunity for the handicapped individual in terms of:

- Aquatics
- Camping
- Crafts
- Dance
- Drama
- Entertainment
- Fine Arts
- Graphics
- Hobbies
- Mental and Literary Activities
- Music
- Outdoor Recreation
- Scouting and 4-H
- Social Recreation
- Sports
- Tourism
- Voluntary Service

It must be recognized that people who are handicapped are inclined to develop a lifestyle which circumvents the mainstream of American life. The many processes operating to exclude the handicapped results in a separatist lifestyle on the part of individuals who are handicapped as well as families who have handicapped members. Simply announcing a new program or service will not break down a lifetime of seperatism.

The ultimate goal for participation by people who are handicapped is that opportunity be provided to the extent that people who are handicapped will live a normal life, that the statistical norms for or of participation will approximate those of the non-handicapped population.

Opportunity will necessarily be created through special services which make participation possible and feasible. Individuals who are handicapped given the opportunity will exercise their free will and natural selection of pursuits will take place. It follows that programs, facilities and services provided by both public and commercial recreation serving agencies will experience statistically proportionate representation of people who are handicapped. Obviously, it may be assumed that the public agencies will, until 1990 or 2,000 receive a higher proportion of handicapped participants than private agencies because of: 1. Their fundamental public responsibility to provide special services as needed; and, 2. The actual civil laws and regulations that exist.

In community recreation for handicapped people we have arrived at a point half-way between pursuing humanistic goals and exercising legal rights. We are providing as much functional aid and assistance as we can based on our humanistic goals; but, neither the handicapped consumer nor the advocate nor the professional worker has a clear understanding as to what a handicapped person's legal right to the "pursuit of happiness" really means.

Thus, the preparation of a "Charter of the Recreation Rights and Responsibilities of People Who Are Disabled" is intended to initiate discussion, study and, in the future, action to enhance handicapped people's human right and civil right to full equal participation in the mainstream of the nation's recreational life.

# Charter
# of the
# Recreation Rights
# and
# Responsibilities
# of
# People Who Are Disabled

Each American child, youth or adult, regardless of handicapping condition, has the right and responsibility to participate during free time in recreation chosen for the inherent satisfactions achieved.

When the handicapping condition causes prejudice, barriers or deficits that result in the inability or failure by the disabled person to exercise the right to achieve equal opportunity on a par with non-handicapped peers, the individual is entitled to services that will create equal opportunity and normative participation.

Community services related to recreation to which the disabled is entitled include the following.

- Administrative and program services designed to provide opportunity for equitable recreation participation.
- Administrative and program services designed to provide normative participation or recreation participation in the least restrictive environment.
- Professional services including special recreation service, therapeutic recreation service, recreation assessment, recreation counseling and recreation education.
- For homebound or residentially restricted, services to provide recreation opportunity and community recreation affiliation.
- Equal opportunity for employment in recreation service occupations.
- Equal opportunity for access to all public, private and commercial recreation, park and cultural areas, facilities and resources.
- Equal opportunity for access to public transportation for the purpose of participating in recreation, the same as is enjoyed by the non-handicapped public.
- Equal opportunity for insurance protection when participating in recreation activity as provided to the non-handicapped general public.

Published by Special Recreation, Inc.
362 Koser Avenue, Iowa City, Iowa 52240

- Equal opportunity for individual handicapped consumer recourse to legal assistance as in other areas such as employment or housing when recreational opportunity or employment is denied in recreation.

Institutional recreation services to which the ill or handicapped individual is entitled include the following.

- Guarantee of the individual's basic right to free choice in recreation for diversion and to the provision of therapeutic or special recreation service as part of the rehabilitation, treatment or education plan, written and non-written.
- Services designed to assure recreational placement upon return to the community.

The individual who is handicapped is responsible for the following.

- Directing his or her recreational activities toward achieving aesthetic, creative, emotional, fitness, intellectual, physical and social benefits.
- Performing consumer and advocate roles and functions in recreation.
- Cooperating with professional services and personnel.

Agencies and personnel providing recreation services to individuals who are handicapped are responsible for the following.

- Direct, in person representation of recreation needs or interests of disabled persons on policy-making and advisory bodies.
- Providing for review of recreation administrative goals, standards, methods and actual delivery by handicapped consumer and advocates.

As the recreation lifestyle of the nation evolves and increases, handicapped Americans have the right to services which offset the disadvantage imposed by disability toward the general goal of participation at parity with the non-handicapped.

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Institutional recreation services to which the ill or handicapped individual is entitled include the following.

- Guarantee of the individual's basic right to free choice in recreation for diversion and to the provision of therapeutic or special recreation service as part of the rehabilitation, treatment or education plan, written and non-written.
- Services designed to assure recreational placement upon return to the community.

The individual who is handicapped is responsible for the following.

- Directing his or her recreational activities toward achieving aesthetic, creative, emotional, fitness, intellectual, physical and social benefits.
- Performing consumer and advocate roles and functions in recreation.
- Cooperating with professional services and personnel.

Agencies and personnel providing recreation services to individuals who are handicapped are responsible for the following.

- Direct, in person representation of recreation needs or interests of disabled persons on policy-making and advisory bodies.
- Providing for review of recreation administrative goals, standards, methods and actual delivery by handicapped consumer and advocates.

As the recreation lifestyle of the nation evolves and increases, handicapped Americans have the right to services which offset the disadvantage imposed by disability toward the general goal of participation at parity with the non-handicapped.

For additional information write
Special Recreation, Inc.
362 Koser Avenue
Iowa City, Iowa 52240

Tel. 319/353-6808
319/337-7578

# THE NEED FOR LEGISLATIVE SUPPORT FOR THE DEAF-BLIND

By

Robert J. Smithdas, L.H.D., Litt.D., L.H.D.
Director of Community Education
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# THE NEED FOR LEGISLATIVE SUPPORT FOR THE DEAF-BLIND

In recent years many groups of disabled persons have organized to advocate their special needs and to obtain recognition and assistance through legislation on local, state, and national levels. Through persistent and sometimes militant efforts, these groups have been instrumental in having legislation passed that provides a growing number of supportive services and subsidies intended to make life easier for the disabled individual by providing greater opportunities for employment and independent living. Most of these groups have established direct liaison with local and federal governments, and are very articulate in expressing their rights as citizens.

These groups are asking for many special concessions. For example, the deaf demand interpreters and direct telecommunication systems; wheelchair users want the elimination of architectural barriers; and the blind ask for braille markings on the doors and elevators in public buildings. And there is a growing insistence by all groups that new laws favoring the disabled be complied with by professional workers and agencies serving the disabled.

The deaf-blind people of this country have always been regarded as one of the most severely disabled and neglected groups of the handicapped in the national population. Because of the unique problems created by the loss of both sight and hearing, deaf-blind individuals require more supportive services and technical aids to achieve relative independence than many other groups. Yet because they represent a small minority, and because they are overshadowed by larger groups of the handicapped their needs are rarely recognized, in special legislation, except when there are incidental benefits from such legislation for a larger, more articulate group of the disabled. Advocacy by the deaf-blind themselves has been difficult because there has generally been a lack of organization among them; and many deaf-blind persons, lacking coherent speech, cannot express their wants and needs forcefully on the legislative level.

The deaf-blind do not want paternalism. They want those essentiale necessary for the attainment of a measure of security, personal freedom and happiness. This is being partially accomplished today through interested, sympathetic sources, but not through a dependable, standard program of services sponsored by government.

The following suggestions are broad, general areas where I believe beneficial legislation for the deaf-blind should begin:

1. There should be legislation on the national level to have aids and devices for the deaf-blind subsidized by the federal government. Many aids and devices for the deaf-blind are too expensive for the ordinary deaf-blind individual to afford. It is true that some states do supply such materials, but this is not the general pattern. Several foreign countries in Europe have been providing such subsidies for a number of years. Such subsidies would assure that every deaf-blind individual would have the benefit of communication and reading devices, and other technical aids, usually too costly for the ordinary individual.

2. There should be legislation to establish a federal office that can advocate the needs of the deaf-blind population, with powers to protect the rights of the deaf-blind as consumers and citizens. Such national offices are already in existence for the deaf, the blind, and other handicapped groups. Preferably, such an office would be under direction of a capable deaf-blind person.

3. There should be legislation on both the state and national levels to exempt deaf-blind people from the payment of personal income taxes. This takes into consideration that deaf-blind people need interpreters, guides, and readers and other amenities of service, that are essential, due to problems of communication and mobility created by their handicaps.

4. There should be legislation for the training and subsequent employment of deaf-blind persons by agencies directly serving the deaf-blind population, if such agencies receive federal funding, with provision for adequate support services, and guidelines to insure compliance. Such agencies should be required to train deaf-blind applicants into their programs, and a determinate percentage of the staff should be deaf-blind. The presence of a number of deaf-blind staff workers would increase sensitivity of other staff members to the needs of the deaf-blind community.

I have outlined only four broad areas of possible legislation. There is no doubt that each area would need specific guidelines for implementation, and there are certainly other areas of legislation that could be added. I feel that the time is coming when deaf-blind people will be as insistent on their rights as citizens as any other group of the handicapped. Disability does not make a handicapped person less of a human being; and if we sincerely acknowledge this dictum, we should make every effort to uphold its meaning by deed as well as by principle.

Statement of James A. Cox, Jr., Executive Director
National Association of Rehabilitation Facilities
Before the U.S. Commission on Civil Rights

## I. Background Information on Sheltered Workshops

According to the Department of Labor, in 1979 there were 1,700 sheltered workshops and 3,000 work activity centers serving more than 200,000 people annually. Although workshops differ in the range and extent of services provided, most workshop programs concentrate on restoring or improving the productivity and earnings of handicapped people. The three main functions of a workshop are:

(1) As a rehabilitation agency--To reduce the number and severity of living and adjustment problems of the handicapped.

(2) As an employment preparation agency--To train and vocationally prepare the handicapped for placement into competitive employment.

(3) As an employer--To provide sheltered remunerative employment.

Sheltered workshops provide remunerative work (either of a transitional or extended nature) and are non-profit. Workshops provide services including vocational evaluation, work adjustment, training, remunerative employment, and placement. They also provide supportive services such as social and psychological services, counseling, medical services, recreation, remedial education, transportation services, housing services, and a wide range of other human service programs. Workshops are a permanent job placement for a substantial number of people who are not employable competitively.

Work is the focal point for workshop activities and is used for evaluation and training as well as employment. Reports on sheltered workshop studies have cited the importance of a continuous, adequate and suitable supply of work: it results in higher wage earnings and more effective placement of handicapped persons in the competitive labor market. The unavailability of subcontract work is a serious problem which threatens sheltered workshops and their ancillary services.

The Congress has demonstrated a commitment to remedying the work supply problem through the enactment of legislation to encourage the governmental purchase of commodities produced in shops and support to other programs designed to provide work. Nevertheless, many sheltered workshops still encounter difficulties in obtaining contracts which can provide meaningful work.

## II. Issues

### A. Partial Satisfaction of Sec. 503 of the Rehabilitation Act through Sub-Contracting with Sheltered Workshops.

Throughout the Commission's Consultation on the Handicapped, Section 503 of the Rehabilitation Act was referred to as statute which generated many investigations but few prosecutions. The National Association would like to direct attention to the fact that Section 503 of the Rehabilitation

Statement of James Allen Cox, Jr.
June 19, 1980
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Act of 1973 was designed to encourage employment of handicapped individuals by requiring federal contractors to take affirmative action to employ qualified handicapped individuals.

As presently written, the regulations issued by the Office of Federal Contract Compliance Programs, DOL, state that contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified handicapped individuals in the contractor's own work force unless the contractor is required to hire the workshop employees. We have been hearing from our members that potential major corpurate contractors will not entertain proposals from workshops because they feel that they will be in violation of their 503 obligation. The result is that workshops often don't receive contracts, employees don't receive work and wages are not earned. We recommend that these regulations be reexamined. The Department of Labor in Sheltered Workshop Study, Vol. II emphasized the importance of increasing the work supply to sheltered workshops, and the Department of Labor proposed that federal regulations be changed so that subcontracting to sheltered workshops can be considered part of a company's affirmative action program. Allowing companies to fulfill part of their affirmative action requirements by subcontracting to sheltered workshops would increase the amount of work for the handicapped in shops.

The National Association of Rehabilitation Facilities supports an amendment to the regulations issued by the Office of Federal Contract Compliance Programs. We believe that industries with federal contracts should be allowed to partially satisfy their obligations of affirmative action for handicapped workers by subcontracting with sheltered workshops.

41 CFR Part 60 issued by the Office of Federal Contracts Compliance Programs to assure Compliance with Section 503 of the Rehabilitation Act prohibits the contractor or sub-contractor from discriminating on the basis of physical or mental handicap and also requires the contractor or subcontractor to establish an affirmative action program as set forth in the above referenced regulation.

Section 60-741.6(j) states that contracts with sheltered workshops alone without a corporate affirmative action program will not satisfy the contractor's obligation. Contracts with sheltered workshops requiring the contractor to hire sheltered workshop employees once they have completed their training programs, may now be part of the affirmative action program:

> "(j) Sheltered Workshops. Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified handicapped individuals in the contractor's own workforce. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become qualified as "qualified handicapped individual" as defined in Section 60-741 2".

The National Association of Rehabilitation Facilities recommends that this federal policy be changed and that this subsection be modified. It is good public policy to require contractors to maintain affirmative action programs for handicapped employees.

Such change would generally allow contracts with sheltered workshops to be part of an affirmative action program without requiring employment of workshop workers. Employment would still remain an objective under a subcontract but not a requirement.

This could be achieved by amending Section 60-741.6(j) as follows:

> "(j) Sheltered Workshops. Contracts with sheltered workshops only, in lieu of employment and advancement of qualified handicapped individuals in the contractor's own workforce do not constitute an affirmative action program. Contracts with sheltered workshops may be included within an affirmative action program which otherwise satisfies the requirements of this section."

### B. Section 14(c), Fair Labor Standards Act & Section 504 of the Rehabilitation Act

A second issue which NARF would like to call to the attention of the Commission is a conflict between the Department of Labor's regulations implementing the Fair Labor Standards Act of 1966 and the Department of Education's regulations implementing Section 504 of the Rehabilitation Act of 1973.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against qualified handicapped persons in federally assisted programs and activities. The FLSA regulates employment of handicapped persons at special minimum wages in sheltered workshops. Most of the sheltered workshops receive Federal financial assistance.

The FLSA authorizes the Secretary of Labor to provide, by order or by regulation, for the employment of handicapped clients in "work activities center" at wages which are less than the minimum established under other provisions of the same statute. The work activities centers are to be planned and designed exclusively to provide "therapeutic" activities for handicapped clients whose physical or mental impairments are so severe as to make their productive capacity inconsequential. The Department of Labor's implementing regulation requires that people being trained in work activities centers be physically separated from those receiving the benefits of a sheltered workshop program which is a program for clients producing at not less than 50% of the statutory minimum wage. It is this requirement which NARF believes to be in conflict with this HEW's Section 504 regulation requiring that handicapped persons participate in programs in the least restrictive setting which their disability will allow.

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Recognized rehabilitation principles have demonstrated that handicapped people learn through role modeling, and it is necessary to enhance the opportunities of persons trained in work activities centers by integrating their vocational and social programs whenever possible with the programs of the sheltered workshop clients. NARF strongly opposes the current FLSA regulations requiring physical separation of Work Activity and Sheltered Workshop clients. This regulatioon is in direct conflict with the principles of mainstreaming and 504 of the Rehabilitation Act. We strongly urge the Commission to make recommendations to Department of Labor to alter its FLSA regulations, so that Work Activity Center Clients can be integrated with the less severely handicapped. We believe the DOL regulations requiring physical separation have an adverse effect on the productivity and social adjustment of the severely handicapped.

## C. A National Employment Policy for the Severely Handicapped

Finally the NARF would like to focus attention on the need for a national employment policy for the severely disabled because none of the existing programs addresses all the needs of this special population in a comprehensive manner.

The last decade has seen impressive gains in the recognition of the needs of handicapped people including protection of civil rights, provision of employment opportunities, delivery of services and provision of direct financial support. In each of these areas, public policy in 1980 is substantially more favorable to the disabled than a decade ago. Additionally, public awareness of disabled people is more enlightened and pervasive. Assumptions and myths which were conventional wisdom a decade ago are being dispelled.

The recognition of people with handicapping conditions as victims of discrimination has been called to public consciousness by active and aggressive advocacy by handicapped people themselves. This fits the pattern of civil rights movements of the past whether founded on race, religion, or ethnic origin. Protection of civil rights of handicapped people has been a recurring theme in federal legislation of the 1970's, the most prominent action being enactment of the Rehabilitation Act of 1973. The significance of the Rehabilitation Act and the regulations promulgated under them cannot be overestimated.

Beyond Sections 503 and 504 of the Rehabilitation Act, there are significant advancements in providing employment opportunities for handicapped people. Section 503 is of considerable consequence as it will break down barriers to jobs in competitive employment. For facilities providing sheltered employment, the Javits-Wagner-O'Day program under which government contracts are set aside for workshops employing handicapped people, State Use Laws, the Handicapped Assistance Loan Program of the Small Business Administration, Community Development Block Grants for facilities through the Department of Housing and Urban Development, the Comprehensive Employment and Training Act and similar advances have expanded opportunities for employment of the handicapped. There are defects and limitations in these programs, but they provide an important foundation.

These are some of the major programs and policies which bear on employment and rehabilitation of the handicapped. The challenge of the next decade is to mold these elements into a comprehensive national employment policy, by filling in the gaps while maintaining and safeguarding the existing base.

There is an unfinished agenda for developing a truly national and comprehensive employment policy for handicapped people. The objectives of such a policy are the following:

1. To the maximum extent possible, disabled people should have the opportunity to hold jobs in competitive employment.
2. People who are limited in their ability to hold competitive jobs should be able to obtain sheltered employment. Such employment opportunities should be stable and adequately compensated.

The hallmark of the rehabilitation movement is the restoration of disabled people to productive activity. The argument that "people restored to work are taxpayers not tax eaters" has prevailed in the Congress to sustain the vocational rehabilitation program under the Rehabilitation Act and others as well. This principle is sound and should be pursued both politically and programmatically. However, it is clear that a significant part of the disabled population will not, under current circumstances, find jobs in competitive employment.

Rehabilitation facilities are dealing with more severely handicapped people, particularly the mentally retarded and mentally ill. For many such people, rehabilitation facilities are not a medium of transition, but the employer of last resort. Policies in this area of sheltered employment are under strain and require substantial overhaul.

Currently, there is certain public ambivalence toward sheltered employment. Some advocacy groups regard sheltered workshops as exploitive and there is enough fire with this smoke to attract the attention of national news media. On the other hand it seems clear that affirmative action coupled with the best of rehabilitation programs will not in the near term provide adequate employment opportunities in the competitive sector for severely handicapped people.

We must rethink the range of opportunities now available and apply to sheltered employment the expertise in engineering, management and finance commonplace in American industry. While income supplements and direct public support will be essential for some, a prime policy objective should be to increase productivity and wages. Over the not-too-long haul, such investments in sheltered workshops are preferable to transfer payments and person dependence.

## III. Summary

Overall, The National Association of Rehabilitation Facilities strongly supports further investigation by the Commission on these issues which we have presented:

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June 19, 1980
Page 6, Continued

A. Amending Section 503 of the Rehabilitation Act of 1973 to allow Federal Contractors to partially fulfill their Affirmative Action requirements by awarding subcontracts to sheltered workshops.

B. Changing the Department of Labor's requirements that work activity clients be segregated from sheltered workshop clients.

C. Developing a national employment policy on the severely disabled which will guarantee either sheltered or competitive employment and support services.

The Commission is invited to direct questions or requests for clarification to the Association at the following address:

National Association of Rehabilitation Facilities
5530 Wisconsin Avenue, Suite 955
Washington, D.C. 20015
(301) 654-5882

JUN 11 1980

## Statement on ADAMHA Programs and Civil Rights Issues Relating to ADM Populations

### A. Agency Functions

The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), an agency of the Public Health Service, U.S. Department of Health and Human Services, provides leadership, policies and goals for the Federal effort designed to assure the treatment and rehabilitation of persons with alcohol, drug abuse, and mental health problems and to prevent such problems. In carrying out these responsibilities, ADAMHA:

(1) conducts and supports research on the biological, psychological, sociological, and epidemiological aspects of alcoholism, drug abuse, and mental health and illness; (2) supports the training of professional and paraprofessional personnel in the prevention, treatment and control of alcoholism and drug abuse; and the promotion of mental health and the prevention and treatment of mental illness; (3) conducts and supports research and development on the delivery of alcoholism, drug abuse, and mental health services and supports services programs and projects, including facilities construction as appropriate; (4) develops standards and regulations for assuring the quality of alcoholism, drug abuse, and mental health services and provides assistance to regional, State, and local professional standards review organizations; (5) encourages the inclusion of alcoholism, drug abuse, and mental health services as part of the basic range of health services and their eligibility under Federal and other health financing sources, including third-party payment through insurance programs; (6) facilitates linkages of alcohol, drug abuse, and mental

health services with social, law enforcement, and other human services; (7) collaborates with and provides technical assistance to State authorities and regional offices, and supports State and community efforts in planning, establishing, maintaining, coordinating and evaluating more effective alcoholism, drug abuse, and mental health programs; (8) collaborates with, provides assistance to, and encourages other Federal agencies, national, foreign, State and local organizations, hospitals, and voluntary groups to facilitate and expand programs for the prevention of alcohol, drug abuse, and mental health problems and for the care, treatment, and rehabilitation of persons with these problems; and (9) provides information on alcoholism, drug abuse, and mental health to the public and to the scientific community.

ADAMHA's organizational structure includes the Office of the Administrator (OA) and three component Institutes, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute on Drug Abuse (NIDA), and the National Institute of Mental Health (NIMH). The Office of the Administrator carries out such activities as providing the leadership and coordination in the development of policies and programs concerned with the research, human resources development and training, prevention and treatment of alcoholism, drug abuse, and mental illness and the promotion of mental health.

The Institutes carry out the programmatic activities of the agency.

## I. National Institute on Alcohol Abuse and Alcoholism (NIAAA)

The National Institute on Alcohol Abuse and Alcoholism provides leadership, policies, and goals for the Federal effort in the prevention, control, and treatment of alcohol abuse and alcoholism and the rehabilitation of affected individuals. In carrying out these responsibilities, the Institute: (1) conducts and supports research on the biological, psychological, sociological, and epidemiological aspects of alcohol abuse and alcoholism; (2) supports the training of professional and paraprofessional personnel in prevention, treatment and control of alcoholism; (3) conducts and supports research on the development and improvement of alcoholism services delivery, administration, and financing, and supports alcoholism services programs and projects, including facilities construction as appropriate; (4) collaborates with and provides technical assistance to State authorities and Regional Offices and supports State and community efforts in planning, establishing, maintaining, coordinating and evaluating more effective alcohol abuse and alcoholism programs; (5) collaborates with, provides assistance to, and encourages other Federal agencies, national, foreign, State and local organizations, hospitals, and voluntary groups to facilitate and expand programs for the prevention of alcohol abuse and alcoholism, and for the care, treatment, and rehabilitation of alcoholic persons; (6) develops, implements, and administers an alcoholism detection, referral, and treatment program for Federal civilian employees within the Public Health Service; (7) carries out administrative and financial management, policy development, planning and evaluation, and public information functions which are required to implement such programs.

According to data from 1975, there are approximately 13 million alcoholic persons and problem drinkers in the United States. Of these, approximately 10 million are adults and 3.3 million are teenagers. Less than 20 percent of them are receiving the treatment they need. Approximately 602,000 receive treatment through federally-assisted programs. The immediate goal of NIAAA is to make the best possible treatment and rehabilitation services available at the community level. Hundreds of local programs are supported through grants to States and local communities to establish alcoholism services for employees of private industry, for special groups such as public inebriates, minorities and women, and to train specialists in the treatment of alcohol abuse and alcoholism. NIAAA also funds research studies to determine the causes of alcohol problems, and to improve treatment methods.

## II. National Institute on Drug Abuse (NIDA)

The National Institute on Drug Abuse provides leadership, policies, and goals for the Federal effort in the prevention, control, and treatment of narcotic addiction and drug abuse, and the rehabilitation of affected individuals. In carrying out these responsibilities, the Institute: (1) conducts and supports research on the biological, psychological, sociological, and epidemiological aspects of narcotic addiction and drug abuse; (2) supports the training of professional and paraprofessional personnel in prevention, treatment and control of drug abuse; (3) conducts and supports research on the development and improvement of drug abuse services delivery, administration, and financing and supports services programs and projects including facilities construction as appropriate; (4) collaborates with and provides technical assistance to State authorities and Regional Offices, and supports State and community efforts in planning, establishing, maintaining, coordinating and evaluating more effective narcotic addiction and drug abuse programs; (5) collaborates with, provides assistance to, and encourages other Federal agencies, national, foreign, State and local organizations, hospitals, and volunteer groups to facilitate and extend programs for the prevention of narcotic addiction, and for the care, treatment, and rehabilitation of addicted persons; and (6) carries out administrative and financial management, policy development, planning and evaluation, and public information functions which are required to implement such programs.

Drug abuse remains a serious national problem, particularly as it affects the country's youth. The NIDA goals of making treatment available for narcotic addicts and other drug users is pursued through funding all States to establish drug treatment programs that admit approximately 400,000 people each year. NIDA's research activities have been directed at: epidemiology of drug abuse; etiology; adverse effects of drugs on the physical and mental health of drug abusers, effective treatment strategies and procedures; and pharmacology, biochemistry and neurophysiology of abused drugs and mechanisms involved in drug tolerance, dependence and addiction.

## III. National Institute of Mental Health (NIMH)

The National Institute of Mental Health provides leadership, policies, and goals for the Federal effort in the promotion of mental health, the prevention and treatment of mental illness, and the rehabilitation of affected individuals. In carrying out these responsibilities, the

Institute: (1) conducts and supports research on the biological, psychological, sociological, and epidemiological aspects of mental health and illness; (2) supports the training of professional and paraprofessional personnel in the promotion of mental health and the prevention and treatment of mental illness; (3) conducts and supports research on the development and improvement of mental health services delivery, administration, and financing, and supports mental health services programs and projects including facilities construction as appropriate; (4) collaborates with and provides technical assistance to State authorities and Regional Offices, and supports State and community efforts in planning, establishing, maintaining, coordinating and evaluating more effective mental health programs; (5) collaborates with, provides assistance to, and encourages other Federal agencies, national, foreign, State and local organizations, hospitals, and volunteer groups to facilitate and extend programs to promote mental health and prevent mental illness, and for the care, treatment, and rehabilitation of mentally ill persons; (6) carries out administrative and financial management, policy development, planning and evaluation and public information functions which are required to implement such programs; (7) exercises administrative and policy oversight for the operation of Saint Elizabeths Hospital.

An estimated 1 our of every 10 Americans suffers at some time from some form of mental or emotional illness. A major development in the last 20 years has been a steady decline in the inpatient population of public psychiatric hospitals as a result of the emphasis on community-based care. Thus, instead of being confined, many of the mentally ill can now obtain treatment at more than 800 community mental health centers which were launched with funds from NIMH. Community mental health centers offer a full compliment of community based services including outpatient treatment, partial hospitalization, emergency services, and consultation and education. A major focus of NIMH's research program is the study of the cause, prevention and treatment of mental illnesses. NIMH also funds training programs for all types of mental health workers.

## B. Some Areas of Discrimination

This section briefly discusses some of the areas where alcoholics, drug abusers and mentally ill persons (the ADM populations) or those with a history of these disorders have experienced discrimination. While Sections 503 and 504 of the Rehabilitation Act of 1973 include the ADM populations as "handicapped," long-term practices which have consistently eliminated the ADM populations from full participation in society still remain. Following are some areas where the ADM populations has experienced discrimination.

1. Employment - Persons with histories of alcoholism, drug abuse and/or mental illness have been victims of discrimination in the employment area. Although Sections 503 and 504 of the Rehabilitation Act of 1973 provides them protection if they are "qualified" and can be employed with a "reasonable accommodation," the stigma attached to being labeled as an alcoholic, drug abuser or mentally ill person often leads to an employer hiring the person who does not have a history of these disorders. The ADM populations are considered by many employers to

be poor risks due to their unstable emotional states. Although Section 504 prohibits inquiries about previous or existing mental or physical handicaps unless it is essential to the job and after a job has been offered, there are still many employers who ask questions about these conditions on application forms as important to the decision on who will be offered the job. Additionally, although Section 503 provides that handicapped persons be included in the affirmative action plans of Federal contractors, it is unclear whether the ADM populations are receiving the benefits that other handicapped groups are from employers.

2. Housing - Obtaining housing for current and former alcoholics, drug abusers and mentally ill persons is often difficult. Programs desiring to establish halfway houses or other types of community-based residential treatment programs frequently find it impossible to secure appropriate locations in the community. Zoning laws often prohibit their establishment. Also, the residents of the area have prejudices based on stereotypes of persons with problems of drug abuse, alcoholism and mental illness as being violent and menaces to the community. The Community Support Program in NIMH which is designed to facilitate the integration of chronically mentally ill persons into their communities has had many problems with finding appropriate housing.

The proposed Fair Housing Amendments Act of 1980 include protection for handicapped persons against discrimination in buying or renting housing. However, it excludes from coverage current drug or alcohol abuse and "any other impairment that would constitute a direct threat to the safety or property of others." This exclusion might significantly increase the problem of obtaining housing for chronically mentally ill and mentally restored persons as well as for recovered alcoholics and former drug abusers.

3. Vocational Rehabilitation Services - Although the ADM populations are included as categories of disability eligible for vocational rehabilitation services, many programs report that it is difficult for these clients to receive them. Many professionals complain that State Vocational Rehabilitation authorities have placed priority on training severely disabled persons. Persons suffering from alcoholism, drug abuse or mental illness are classified as mildly disabled unless they have an accompanying physical disability. This gives them a low priority for these services.

4. Education - Persons with histories of alcoholism, drug abuse and/or mental illness have often been asked about these disabilities on application forms for admission to post secondary programs. This information was then used to justify denying admission. Although Section 504 prohibits asking this information, a study has not been undertaken to determine whether all application forms for post secondary programs are in compliance.

5. Obtaining Life Insurance - Persons with histories of mental illness have often been either denied insurance or placed in a high-risk category. Clinicians report that this appears to be true for males who have a diagnosis of depressive neurosis where insurance companies consider them a high risk for suicide.

6. Job-Related Insurance - There are liability insurance policies which prohibit coverage for persons with a history of or in treatment for alcoholism or drug abuse. The construction industry has been cited by many clients and professionals as an example, thus denying former alcoholics and former drug abusers access to these jobs.

7. Medical Services - Discrimination against drug and alcohol abusers in general hospital and outpatient clinics is prohibited under Section 504, if the discrimination is on their alcoholism or drug abuse per se. However, reports from professionals in the alcoholism and drug abuse fields indicates that the practice of denying medical treatment to persons with primary diagnoses of alcoholism or drug abuse continues even in light of Section 504. Also, chronically mentally ill persons, who often have many somatic complaints, frequently receive cursory medical care as they are not taken seriously by the medical staff. There is a fear that if the mentally ill persons is admitted to the hospital they will never leave since they will continue to develop new medical complaints which are symptomatic of their mental illness.

## C. Issues Related to Compliance with Section 504

ADAMHA sponsored 10 training sessions on the requirements of Section 504 of the Rehabilitation Act of 1973, one in each DHHS Region, from October 1979 to February 1980. Over 350 recipients of treatment and service funds administered through NIAAA, NIDA, and NIMH sent participants to these seminars. In addition, presentations were made at the NIDA-sponsored workshops for drug abuse programs. Following are a number of issues raised by workshop participants regarding compliance with this regulation.

1. The issue of the money necessary to make structural changes to the physical plant of the program was always quite intense. ADAMHA grant monies can not be used for construction costs. Thus, many questions were raised as to where the necessary funds would be secured.

2. Many employment applications continue to ask whether the applicant has been treated for or is currently in treatment for alcoholism, drug abuse or mental illness. While the seminar participants believed that their employment applications did not contain this type of discriminatory question, they cited numerous instances of reports from their clients about encountering this problem with applications to firms receiving Fedral financial assistance.

3. Post secondary training and education programs continue to ask about histories of alcoholism, drug abuse, and mental illness on their applications.

4. There is a need for consciousness raising among staffs of service settings to the special needs of severely handicapped persons, especially those with multiple disabilities. There is also a need for research on the effectiveness of various treatment techniques for alcoholism, drug abuse, and mental illness with physically disabled persons and whether special techniques need to be developed.

5. The reviews of interview and recruitment practices in ADM service programs indicate that many of the widely accepted practices were in need of revision as they potentially discriminated against some classes of physically handicapped persons.

6. Issues related to the delivery of emergency services to deaf persons was of concern. While many of the programs had installed TTY's (devices which enable deaf persons to transmit written messages over the telephone system) on their emergency lines, few had the availability of interpreters for deaf persons on a round-the-clock basis.

7. The need for some changes in the outreach procedures for ADM service programs. Specifically, some of the participants felt that they had not adequately involved the physically handicapped community in their programs by not involving them in their advisory board nor assessing whether they had special needs which their programs were not addressing.

**National Industries for the Blind**
Rehabilitation Services Division
320 Fulton Avenue, Hempstead, NY 11550 • (516) 485-0230

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Executive Vice-President

June 9, 1980

The Honorable Arthur S. Flemming
Chairman
United States Commission on
Civil Rights
Community Services Administration
Washington, DC 20425

Dear Mr. Flemming:

I had an opportunity to attend the recent conference sponsored by the United States Commission on Civil Rights, which concerned itself with the civil rights of handicapped persons. I attended this conference as a non-participating observer on behalf of National Industries for the Blind. NIB supports the efforts of the Commission to deal effectively with the major issues facing handicapped persons in this country today.

National Industries for the Blind is the Central Nonprofit Agency which represents qualified workshops for the blind which participate in the program of the Javits-Wagner-O'Day Act (Public Law 92-28). This law gives a priority to workshops for the blind in the manufacture of selected goods for purchase by the Federal Government. In its role as the Central Nonprofit Agency, NIB presently represents 102 workshops for the blind located throughout the country. These workshops provide employment services for approximately 5,500 blind and multihandicapped blind persons. In addition, these workshops and agencies of which they are a part provide vocational, social, recreational, and other support services for approximately 45,000 blind and multihandicapped blind persons. These workshops are located in 35 States, the District of Columbia, and the Commonwealth of Puerto Rico. Many of these workshops are private nonprofit agencies while others are operated under the auspices of State agencies.

NIB has as its major responsibility the allocation of Federal Government Purchase Orders among these qualified workshops. In addition, we provide a wide range of supportive services to these workshops so that they can develop, improve, and expand their total range of services for blind and multihandicapped blind persons. These include, but are not limited to, such services as product research and development, quality assurance, costing and pricing, industrial and mechanical engineering, subcontract procurement, public education, and assistance with the development of effective vocational rehabilitation programs. I am enclosing for your information a copy of our most recent Annual Report and a paper entitled "An Introduction to National Industries for the Blind." These materials will explain to you in detail the functions and services of NIB and how we work cooperatively with the associated workshops in developing expanded employment opportunities for multihandicapped blind persons. The basic goal of NIB and its associated workshops is to provide employment and related services for blind persons who are not yet capable of employment in the competitive sector.

While I very much enjoyed the opportunity to attend your recent conference, I do believe that there are two issues which seriously impact upon workshops for the blind which need to be addressed in greater detail. One of these issues was covered to some extent during the conference while the other issue received very little attention.

The first issue is the disincentives inherent in the Supplemental Security Income and Social Security Disability Insurance Programs which was reviewed by a number of the speakers during the conference. However, these programs have a compounded effect on those persons served in workshops for the blind who have multiple handicapping conditions. While the Supplemental Security Income Program for blind persons is considerably more liberal than the Social Security Disability Insurance Program for blind persons, both have earnings limitations which cause serious concern in the minds of numbers of blind persons regarding continued employment. When a blind person approaches the earnings limitation under either of these programs he or she is placed in the position of jeopardizing both cash and medical coverage benefits. Experience has shown that the effect of this is that numbers of blind persons purposely keep down production, purposely have high absenteeism or simply stop working as they approach this earnings limitation. In addition, an HEW representative once advised us that approximately 43,000 blind persons are "out there somewhere" who could possibly benefit from the services of a workshop for the blind. It is our opinion that many of these blind people do not take advantage of these services simply because they fear jeopardizing either their SSI or SSDI benefits.

While the intent of the Congress in establishing both of these programs was to provide a basic level of support for persons who are handicapped by blindness, the programs, in effect, have had a negative effect on blind persons capable only of sheltered employment. Workshops for the blind are now finding that they must become more and more involved in developing part-time work programs in order to meet the needs of blind persons who are covered by either of these programs and fear approaching the earnings limitations. I am sure you can see that this makes it rather difficult for workshops for the blind to provide a continuum of needed vocational and ancillary services for the individual blind person.

The SSI and SSDI earnings restrictions have had the effect of inhibiting many blind and multihandicapped blind persons from living up to their full potential as productive members of our society. Our experience has shown that the primary fear of blind persons in such a position is the fear of losing their medical benefits. The benefits available under both the Medicare and Medicaid Programs are quite extensive and in many cases cannot be duplicated by either workshops for the blind or competitive industry.

The second issue relates to the potential curtailment of employment opportunities for multihandicapped blind persons who are not capable of employment in the competitive sector. Approximately 60% of all blind persons receiving an employment service in the NIB-associated workshops have a vocational handicap in addition to blindness. A study by the American Foundation for the Blind in the early 1970's of 9,000 multihandicapped blind children showed that 80% of this group were mentally retarded. In addition, a full 75% of those blind children had a third vocational handicap. These children are rapidly reaching employment age and will present a new set of problems which will have to be dealt with primarily by workshops for the blind or the agencies of which they are a part.

As you may know, there has been a movement over the last two years on both Federal and State levels which would require the payment of minimum wages to all blind persons receiving an employment service in a workshop for the blind. While this may seem to be a most positive step on the surface, it will, if effected, have a monumental negative effect on services for multihandicapped blind persons who are not capable of employment in the competitive sector. This movement is basically aimed at the elimination of Section 14C of the Fair Labor Standards Act which allows the DOL to exempt from minimum wage requirements, workshops serving blind or handicapped persons so as not to eliminate employment opportunities for those persons who are not capable of employment in the competitive sector. It should be noted that the NIB-associated workshops paid out in subsidies over $1,000,000 in fiscal year 1979. Subsidies can be defined as wage payments over and above the true earnings of the individual. Recent information compiled by NIB shows conclusively that it would require approximately an additional $3,000,000 annually in order to bring all blind persons in workshops for the blind associated with NIB up to the present minimum wage of $3.10 per hour. There has yet to be any valid suggestion as to where these funds might come from.

However, the true cost cannot be expressed in dollars. If such a minimum wage requirement became the law, the result would be the immediate cessation of employment services for large numbers of multihandicapped persons who are now capable only of specialized employment in a workshop for the blind.

Even this does not give a true picture of the real cost in human services. In the future, as thousands of multihandicapped blind persons reach a stage of development where placement in a special workshop becomes a realistic goal, such placement may be denied unless that multihandicapped blind person can attain close to the minimum wage established by law. This then will deny vocational opportunities to these persons because the workshop will not be able to afford the large supplement required to bring them to the mandated minimum wage without regard to productive ability. A requirement of this type certainly seems contrary to the Rehabilitation Act which mandates a service priority for severely handicapped persons.

While NIB supports your efforts to explore, define, and eliminate the barriers faced by handicapped persons who are capable of competing with their non-handicapped peers, we also believe attention must be paid to the employment rights of persons who have handicaps in addition to blindness and are not yet capable of employment in the competitive sector.

If we at NIB can provide you with any additional information or answer any questions that you might have, we will be most happy to do so. Please feel free to call on us at your convenience.

Sincerely yours,

Robert Hanye
Rehabilitation Services Advisor

RH:jec

Enclosures

# APPENDIX

# CIVIL RIGHTS ISSUES OF HANDICAPPED AMERICANS: PUBLIC POLICY

## A Selected Bibliography

Prepared for a Consultation sponsored
by the U.S. Commission on Civil Rights,
Washington, D.C., May 13-14, 1980

NATIONAL CIVIL RIGHTS
LIBRARY, May 1980

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